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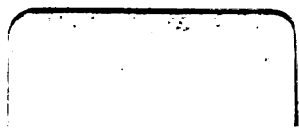
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PROCEEDINGS

OF THE

Washington State Bar Association

FOURTEENTH ANNUAL SESSION

Held at the City of Ellensburg, August 5th, 6th and 7th, 1902.

**OLYMPIA, WASH.
BLANKENSHIP & CROWLEY.
1902.**

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**The Fifteenth Annual Session
of the
Washington State Bar Association
will be held in the
City of Tacoma, beginning on August 25, 1903,
at 10 o'clock a. m.**

OFFICERS.

<i>President,</i>	R. G. HUDSON,	Tacoma.
<i>First Vice President,</i>	WILLIAM A. PETERS,	Seattle.
<i>Second Vice President,</i>	P. F. QUINN,	Spokane.
<i>Third Vice President,</i>	EDWARD WHITSON,	North Yakima.
<i>Secretary,</i>	EUGENE G. KREIDER,	Olympia.
<i>Treasurer,</i>	NATHAN S. PORTER,	Olympia.

DELEGATES TO AMERICAN BAR ASSOCIATION.

C. H. HANFORD,	Seattle.
GEORGE TURNER,	Spokane.
T. L. STILES,	Tacoma.

STANDING COMMITTEES.

JURISPRUDENCE AND LAW REFORM.

H. S. GRIGGS	Tacoma.
R. A. BALLINGER	Seattle.
M. A. FULLERTON	Olympia.
F. H. BROWNELL	Everett.
E. C. MILLION	Mount Vernon.

JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

HIRAM E. HADLEY	New Whatcom.
THOS. B. HARDIN	Seattle.
CYRUS HAPPY	Spokane.
C. B. GRAVES	Ellensburg.
FRANK ALLYN	Tacoma.

LEGAL EDUCATION AND ADMISSION TO THE BAR.

J. B. HOWE	Seattle.
T. L. STILES	Tacoma.
O. P. BROWN	New Whatcom.
J. H. PARKER	Hoquiam.
C. S. VOORHEES	Spokane.

COMMERCIAL LAW.

FREDERICK BAUSMAN	Seattle.
S. J. CHADWICK	Colfax.
T. O. ABBOTT	Tacoma.
C. H. NEAL	Sprague.
W. T. WARREN	Wilbur.

UNIFORMITY OF STATE LAWS.

E. F. BLAINE	Seattle.
EDWARD WHITSON	North Yakima.
SAMUEL R. STERN	Spokane.
JOHN A. SHACKLEFORD	Tacoma.
THOS. H. BRENTS	Walla Walla.

PUBLICATIONS.

ALLEN WEIR	Olympia.
J. M. HARRIS	Tacoma.
O. R. HOLCOMB	Ritzville.
A. E. GRIFFITH	Seattle.
KIRK WHITED	Wenatchee.

GRIEVANCES.

ALFRED BATTLE	Seattle.
H. W. LUEDERS	Tacoma.
S. DOUGLAS	Colville.
W. J. C. WAKEFIELD	Spokane.
JOHN ARTHUR,	Seattle.

OBITUARIES.

W. H. DOOLITTLE	Tacoma.
JOHN B. ALLEN	Seattle.
C. W. HODGDON	Montesano.
H. D. CROW	Spokane.

ROLL OF MEMBERS.

Abbott, T. O.,	Tacoma.
Albertson, R. B.,	Seattle.
Allen, John B.,	Seattle.
Allen, W. L.,	Spokane.
Arthur, John,	Seattle.
Ballinger, R. A.,	Seattle.
Barbo, O. B.,	New Whatcom.
Bates, Charles O.,	Tacoma.
Battle, Alfred,	Seattle.
Bausman, Frederick,	Seattle.
Belt, George W.,	Spokane.
Binkley, J. W.,	Spokane.
Blackburn, H. H.,	Puyallup.
Blaine, E. F.,	Seattle.
Bowman, A. C.,	Seattle.
Brady, Edward,	Seattle.
Brandt, Emil J.,	Seattle.
Brents, Thomas H.,	Walla Walla.
Bronson, Ira,	Seattle.
Brown, O. P.,	New Whatcom.
Brownell, F. H.,	Everett.
Buck, Norman,	Spokane.
Burke, Thomas,	Seattle.
Barnhart, Richard M.,	Spokane.
Campbell, F.,	Tacoma.
Carroll, Thomas,	Tacoma.
Cass, J. P.,	Tacoma.
Caton, Nathan T.,	Davenport.

Chadwick, S. J.,	Colfax.
Claypool, C. E.,	Circle City.
Cole, Irving T.,	Seattle.
Cole, Albert S.,	New Whatcom.
Condon, John T.,	Seattle.
Cross, J. C.,	Aberdeen.
Crow, Herman D.,	Spokane.
Crowley, D. J.,	Tacoma.
Davidson, John B.,	Ellensburg.
Davis, Peter V.,	Seattle.
Dawson, James,	Spokane.
Dawson, William Sherman,	Spokane.
Deming, A. W.,	Summit.
De Steiguer, George E.,	Seattle.
Doherty, L. A.,	
Donworth, George,	Seattle.
Douglas, S.,	Colville.
Dudley, F. M.,	Spokane.
Edsen, Eduard P.,	Seattle.
Fogg, Charles S.,	Tacoma.
Fogg, George W.,	Tacoma.
Forster, George M.,	Spokane.
Fullerton, Mark A.,	Colfax.
Fulton, Walter S.,	Seattle.
Gay, Wilson R.,	Seattle.
Gilbert, W. S.,	Spokane.
Gilliam, Mitchell,	Seattle.
Glass, Chester,	Spokane.
Gordon, Merritt J.,	Spokane.
Gose, M. F.,	Pomeroy.
Gowan, Richard,	Seattle.
Graves, Carroll B.,	Ellensburg.
Graves, W. G.,	Spokane.
Greene, Roger S.,	Seattle.
Griffiths, Austin E.,	Seattle.
Griggs, Herbert S.,	Tacoma.
Guerin, Reynolds F.,	Seattle.

Hadley, Hiram E.,	New Whatcom.
Hanford, C. H.,	Seattle.
Happy, Cyrus,	Spokane.
Hardin, Thomas B.,	Seattle.
Harris, James M.,	Tacoma.
Harris, W. H.,	Tacoma.
Hartman, John P. jr.,	Seattle.
Hartson, Millard T.,	Spokane.
Hartson, D. H.,	Ritzville.
Hastings, H. H. A.,	Seattle.
Hess, John B.,	Spokane.
Heyburn, W. B.,	Spokane.
Heyburn, E. M.,	Spokane.
Higgins, Thomas B.,	Spokane.
Hindman, W. W.,	Spokane.
Hinkle, J. D.,	Spokane.
Hodgdon, C. W.,	Montesano.
Holcomb, O. R.,	Ritzville.
Holland, George F.,	Spokane.
Holloway, C. K.,	Spokane.
Holt, R. S.,	Tacoma.
Hovey, C. R.,	Ellensburg.
Howe, James B.,	Seattle.
Hoyt, John P.,	Seattle.
Hoyt, Henry M.,	Spokane.
Hoyt, Charles W.,	Spokane.
Hudson, R. G.,	Tacoma.
Humphries, John E.,	Seattle.
Huneke, William A.,	Spokane.
Huntley, Herbert B.,	Seattle.
Hutchinson, George B.,	Seattle.
Jacobs, Orange,	Seattle.
Jacobs, A. L.,	Seattle.
Jones, W. C.,	Butte.
Jones, Richard S.,	Seattle.
Kauffman, Ralph,	Ellensburg.
Kellam, A. G.,	Spokane.

Kennan, H. L.,	Spokane.
Kershaw, T. R.,	New Whatcom.
Knapp, Lyman E.,	Seattle.
Kreider, E. G.,	Olympia.
Langford, F. E.,	Spokane.
Leehey, Maurice D.,	Seattle.
Lehman, Robert B.,	Tacoma.
Lueders, Henry W.,	Tacoma.
Lewis, James Hamilton,	Seattle.
Linn, O. V.,	Olympia.
Lindsley, J. B.,	Spokane.
Lund, Charles P.,	Spokane.
Lung, Henry W.,	Seattle.
Mattison, Thomas,	Tacoma.
McBride, John R.,	Spokane.
McClinton, James G.,	Port Angeles.
McCrosky, R. L.,	Colfax.
McGilvra, John J.,	Seattle.
McGilvra, O. C.,	Seattle.
Mendenhall, Mark F.,	Spokane.
Merritt, H. D.,	Spokane.
Millett, Byron,	Olympia.
Million, E. C.,	Mount Vernon.
Miller, Eugene,	Spokane.
Miller, Fred,	Spokane.
Mires, Austin,	Ellensburg.
Moore, James Z.,	Spokane.
Moore, William H.,	Seattle.
Mount, Wallace,	Sprague.
Munday, Charles F.,	Seattle.
Munter, Adolph,	Spokane.
Murray, Charles A.,	Tacoma.
Myers, H. A. P.,	Davenport.
Neagle, John L.,	Seattle.
Neal, C. H.,	Sprague.
Nichols, J. W. A.,	Steilacoom.
Nuzum, Nulton E.,	Spokane

Nuzum, Richard W.,	Spokane.
Onstine, Burton J.,	Spokane.
Parker, James H.,	Hoquiam.
Parsons, Galusha,	Tacoma.
Peacock, John A.,	Spokane.
Peters, William A.,	Seattle.
Pickrell, J. N.,	Colfax.
Piles, S. H.,	Seattle.
Porter, Nathan S.,	Olympia.
Post, Frank T.,	Spokane.
Prather, L. H.,	Spokane.
Pratt, John Watson,	Seattle.
Preston, Harold,	Seattle.
Pruyn, Edward,	Ellensburg.
Quinn, Patrick F.,	Spokane.
Reavis, James B.,	Olympia.
Reid, George T.,	Tacoma.
Reinhart, C. S.,	Olympia.
Remington, Arthur,	Tacoma.
Richardson, William E.,	Spokane.
Roberts, John W.,	Seattle.
Robinson, J. W.,	Olympia.
Rockwell, T. D.,	Spokane.
Ronald, J. T.,	Seattle.
Root, Milo A.,	Seattle.
Ross, E. W.,	Olympia.
Rowell, Fred. Rice,	Seattle.
Rudkin, Frank H.,	North Yakima.
Saunders, Wirt W.,	Spokane.
Scott, W. D.,	Spokane.
Shackleford, John A.,	Tacoma.
Shank, Corwin S.,	Seattle.
Sheeks, Ben.,	Aberdeen.
Shepard, Chas. E.,	Seattle.
Shepard, Thomas R.,	Seattle.
Shine, P. C.,	Spokane.
Shippen, Joseph,	Seattle.

Slauson, Howard B.,	Seattle.
Slemmons, A. L.,	Ellensburg.
Smith, Eben,	Seattle.
Smith, Del Cary,	Spokane.
Smith, Winfield R.,	Seattle.
Snell, Bertha M.,	Tacoma.
Southard, Frank S.,	Seattle.
Staser, C.,	Ritzville.
Stern, Samuel R.,	Spokane.
Stiles, T. L.,	Tacoma.
Stoll, W. T.,	Spokane.
Strickland, R. E. M.,	Spokane.
Struve, Henry G.,	Seattle.
Tallman, Boyd J.,	Seattle.
Taylor, E. Win.,	Spokane.
Thayer, W. J.,	Spokane.
Thompson, Will H.,	Seattle.
Tolman, Warren W.,	Spokane.
Town, Ira A.,	Tacoma.
Townsend, W. F.,	Spokane.
Turner, George,	Spokane.
Turner, W. W. D.,	Bozeman.
Voorhees, C. S.,	Spokane.
Voorhees, Reese H.,	Spokane.
Wakefield, W. J. C.,	Spokane.
Walker, George H.,	Seattle.
Warburton, S.,	Tacoma.
Warren, W. T.,	Wilbur.
Warner, Clyde,	Ellensburg.
Waugh, J. C.,	Mount Vernon.
Weir, Allen,	Olympia.
Wells, S. A.,	Spokane.
Welsh, W. J.,	Roslyn.
Wheeler, L. H.,	Seattle.
Whited, Kirk,	Wenatchee.
Whitson, Edward,	North Yakima.
Wickersham, James,	Circle City.

Wilhelm, Honor L ,	Seattle.
Williams, James A. ,	Spokane.
Williams, Louis,	Seattle.
Winfree, W. H.,	Spokane.
Zent, W. W.,	Ritzville.

PROCEEDINGS.

ELLENSBURG, WASH., August 5, 1902.

The Washington State Bar Association met in annual session in the City of Ellensburg, in the Superior Court Room, and was called to order at 10:30 A. M. by Hon. Austin Mires, President.

There were present: Hon. Austin Mires, President; R. G. Hudson, First Vice President; Eugene G. Kreider, Secretary, and a quorum of members.

THE PRESIDENT—The first order of business is the reading of the record of the proceedings of the preceding annual meeting.

On motion, the reading was dispensed with, inasmuch as the printed record of proceedings had been placed in the hands of every member of the Association.

THE PRESIDENT—The next thing in order is the address by the President.

On motion, the reading of the President's address was postponed until the afternoon session.

THE PRESIDENT—The next order of business is—

REPORTS OF OFFICERS.

The Secretary then read the reports of the Executive Committee, the Secretary, and of the Treasurer, as follows:

REPORT OF EXECUTIVE COMMITTEE.

TACOMA, January 4, 1902.

The Executive Committee of the Washington State Bar Association met at the office of Vice President Hudson, in Tacoma, President Mires presiding.

The committee selected the following subjects and writers for the program of the Ellensburg meeting of the Washington State Bar Association, to be held August 5th to 7th, 1902:

President's Address—Austin Mires, Ellensburg.

"Conflicting Decisions of Federal and State Courts—Our National Constitution the Harmonizer."—Judge C. H. Hanford, Seattle.

"Some Pioneer Judges and Lawyers I Have Known on This Coast."—N. T. Caton, Davenport.

"Stability of Legal Principles—A Thing of the Past."—Will G. Graves, Spokane.

"Railway and Transportation Commissions"—Arthur Remington, Tacoma.

"The Course of Legislation in Washington."—Edward Whitson, North Yakima.

"A Day in Court."—Poem by Edward Pruyn, Ellensburg.

There being no further business, the committee adjourned.

E. G. KREIDER, Secretary.

SECRETARY'S ANNUAL REPORT.

OLYMPIA, WASH., August 1, 1902.

To the President and Members of the Washington State Bar Association :

GENTLEMEN—I have the honor to submit my annual report as Secretary for the year ending June 30, 1902, as follows :

Number of members as per last report.....	219	
Number joined since last report	24	243
	<hr/>	
Number dropped for non-payment of dues	25	
Number removed from State.....	6	
Number died.....	3	
	<hr/>	84
Present membership		209
	<hr/>	
Cash received from 24 admission fees	\$120 00	
Cash received for dues.....	207 00	
	<hr/>	
Cash paid Treasurer	327 00	
	<hr/>	

I beg leave to report, further, that I have on file at my office in Olympia a large number of reports from various bar associations throughout the country, which are readily accessible to all those desirous of consulting them. These reports are full of valuable and interesting matters pertaining to the legal profession, and will in time make a good reference library along the lines of the history and development of the law.

The demand from other States for copies of the annual reports of our Association still keeps up, and to such an extent that the reports for the years 1895 and 1896 are practically exhausted.

Respectfully submitted,

EUGENE G. KREIDER, Secretary.

TREASURER'S ANNUAL REPORT.

OLYMPIA, WASH., August 1, 1902.

Washington State Bar Association :

GENTLEMEN—I have the honor to submit for your consideration this my annual report as Treasurer of this Association for the fiscal year ending July 31, 1902.

July 12, 1901.	To cash received from Secretary for membership fees.....	\$120 00
“ “	To cash received from Secretary for dues from members	85 00
Oct. 10, 1901.	To cash received from W. A. Peters, former Treasurer.....	262 59
July 12, 1902.	To cash received from Secretary for dues from members.....	101 00
July 31, 1902.	To cash received from Secretary for dues from members	21 00

CR.

July 12, 1901.	By paid Warrant No. 22.....	\$110 75
Oct. 9, 1901.	“ “ “ 23.....	132 30
Oct. 9, 1901.	“ “ “ 24.....	19 55
Aug. 1, 1902.	By cash on hand.....	326 99
		<u>\$589 59</u>
		<u>\$589 59</u>

Very respectfully,

NATHAN S PORTER, Treasurer.

On motion, the reports were ordered received, and placed on file.

The applications of the following named attorneys for membership were read, and on a ballot being taken, they were duly elected to membership, viz.: Edward Pruyn, Ralph Kauffman, H. D. Merritt, C. R. Hovey, W. J. Welsh, Mitchell Gilliam, A. L. Slemmons, and Carroll B. Graves. A letter from N. T. Caton was read, announcing his inability to be present and perform his part of the program, owing to the serious illness of his wife. On motion of Mr. Root, the Secretary was instructed to acknowledge the receipt of the letter, and express the sympathy of the members for his affliction, and their regret at his inability to be present.

MR. WILL G. GRAVES—On behalf of Mr. T. O. Abbott, of Tacoma, I wish to offer the following resolution:

Be it Resolved, That the President of this Association appoint a committee of three members, for the purpose of drafting a bill for the regis-

tration of land titles in the State of Washington, according to the system known as the Torrens System, or such other similar system as may, in their judgment, be advisable; with power to submit said bill to the ensuing session of the Legislature and urge its adoption.

Upon motion of Mr. Hudson, the resolution was amended by adding thereto the following proviso:

Provided, Said committee does not find said provision is in conflict with the Constitution.

On motion of Mr. Whitson, the resolution was laid upon the table.

Before motion, a recess was taken until 2 o'clock p. m.

AFTERNOON SESSION.

ELLENSBURG, WASH., Aug. 5, 1902.

The Association met at 2 p. m., and was called to order by the President.

The President then read his address as follows: (See appendix).

Mr. Whitson then read his paper upon "The Course of Legislation in Washington." (See appendix.)

Mr. Will G. Graves then read his paper entitled "Stability of Legal Principles—A Thing of the Past." (See appendix.)

A discussion upon the papers read ensued, which was participated in by the following members: Messrs. Carroll B. Graves, O. Jacobs, Clyde V. Warner, E. Pruyn, H. D. Merritt and Will G. Graves.

Mr. Rudkin, Chairman of the Committee on Judicial Administration and Remedial Procedure, announced that his committee had no report to submit.

The following invitation from the Ellensburg Club was received and read:

To the Members of the State Bar Association:

GENTLEMEN—During your visit to the City of Ellensburg, whose hospitality you shall freely share, the Ellensburg Club specifically offers you a cordial welcome to its rooms at all times. The rooms are open at

all hours, at the corner of Pearl and Fifth streets. Proverbially speaking. "The latch-string is always out."

Yours very truly,

R. B. WILSON, President.

P. A. GETZ, Secretary.

The Secretary was instructed to express the thanks of the Association to the Ellensburg Club for its hospitality.

Mr. Roor—Inasmuch as there is no member of the Committee on Obituaries present, I move that the committee be instructed to make a report later, which shall be entered in the proceedings as of this date. Motion carried.

On motion, the Association took a recess until 10 o'clock, a. m. tomorrow.

SECOND DAY.

ELLENSBURG, WASH., Aug. 6, 1902.

Association met at 10 a. m., President Mires in the chair.

Communications were read from Messrs. Albertson, Weir, Shank, Moore and Arthur, expressing regret at their inability to attend.

Mr. Remington then read his paper upon "Railway and Transportation Commissions," (see appendix); and a discussion of the topic followed by U. S. Senator Turner and State Senator Preston.

Mr. Whitson, Chairman of the Committee on Legal Education and Admission to the Bar, made a verbal report favoring a college education as one of the requisites of admission to the bar. On motion of Mr. Turner, the committee was granted permission to file a *nunc pro tunc* report.

The Committee on Jurisprudence and Law Reform submitted the following report:

COMMITTEE REPORT

To the Honorable President and Members of the Washington State Bar Association:

GENTLEMEN—On behalf of your Committee on Jurisprudence and Law Reform, I beg to state that owing to the scattered residences of members of the committee it has been impracticable to have a committee meeting. I have, however, corresponded with the other members of the committee with a view of ascertaining their views and ideas upon questions pertinent for discussion, report and recommendations to your honorable body and within the scope of the committee's duties. I enclose herewith a letter from Mr. Will G. Graves of Spokane, accompanied by forms of bills and draft of proposed constitutional amendment, covering subjects worthy of the careful consideration of the Bar Association. I also enclose a letter from Hon. J. T. Ronald of Seattle, member of your committee, addressed to myself upon the subjects therein treated. Also, please find enclosed duplicate copies of these proposed

measures, on which Hon. T. L. Stiles, another member of your committee, has penciled his comments and recommendations.

After carefully considering the questions therein presented, I concur in the suggestions and recommendations of Hon. T. L. Stiles. They are the observations of an eminent and studious lawyer, an ex-President of this Association, and a gentleman whose long experience at the bar and on the supreme bench of the State entitle his views to peculiar weight.

It will also be noticed that Mr. Ronald's views are about in line with the others as herein expressed and in Judge Stiles' remarks.

In addition, however, to what has been said, I wish to add as my individual views a suggestion that if a method of non-partisan *nominations* for judicial offices can be devised, on a basis that will insure the results desired without *separate elections* for judges, it would save a large item of expense. The expense of holding a separate election in all the precincts of the State would be so great that it would not in my judgment be warranted unless the advantage sought were very great, and could not be attained in any other way. Respectfully submitted,

ALLEN WEIR,

Chairman Committee on Jurisprudence and Law Reform.

SPOKANE, WASH., July 14, 1902.

Allen Weir, Esq., Olympia, Wash.:

DEAR SIR—I observe that you are of the Committee on Jurisprudence and Law Reform of the State Bar Association, and as a member of such committee I desire to call your attention to certain reforms in our laws presented to the Bar Association of Spokane County by its Committee on Jurisprudence and Law Reform, of which committee I am chairman. I submit these to you in the hope that you will consider them worthy of submission to the State Bar Association at its meeting in August.

The principal matters presented are the amendments to the constitution providing the manner for the selection of judges of the supreme and superior courts. These amendments were approved by the Bar Association of this county, with the exception of certain matters relating to the details thereof, as some slight changes in the date of holding the election, and other matters which do not at all go to the affecting of the scheme outlined in the amendments which I submit to you. The scheme as outlined, as you will at once see, is the elimination of partisanship and politics entirely from the selection of the judiciary, and leaving it in such manner that the judiciary will be selected by those best qualified to judge of their fitness, inasmuch as where politics are eliminated, only those personally interested in the matter, *viz.*, the lawyers and thinking men of the community, will turn out to the elections. I may say that these amendments have been submitted to several lawyers throughout the State apart from the members of our Bar Association (by whom the

amendments were approved without a dissenting voice), and have always met with approval.

The next most important of the matters submitted is the proposed act relating to the manner of saving exceptions and settling and certifying bills of exceptions. The central thought of this act is to provide a method by which the issues in a cause presented to the supreme court might be so clearly outlined that the mass of irrelevant matter that always encumbers the record under the present system of statement of facts might be eliminated, to the end that the judges can pass upon the questions involved with much less labor and with much better results than now. I may say with relation to section 18 of the proposed act, that this is practically the system prescribed by rules of court in South Dakota and Illinois. I have talked with a former judge of the supreme court of South Dakota, who says that in practical operation the judges in not more than one or two instances in the seven or eight years that he was upon the bench found it necessary to resort to the record to determine what the facts of the case were; that the appellants in all their cases gave so fair an abstract of the facts that they were not questioned by the respondent. We all understand that under the present system it is impossible for all the judges to go through the record and determine what the facts really are. Therefore, the judge writing the opinion is the only one who makes an examination of the record. It follows from this that frequently decision of the judge who tried the case and has heard the witnesses is overruled by another judge who reads simply the testimony. It is certainly more satisfactory, if the supreme court are going to review the facts of the case, that all the judges should have read the record, and when seven have coincided in the view that the one, the trial judge, was mistaken, we feel better satisfied with it. I have talked, also, with lawyers from Illinois, who say that under their practice there was never any controversy between the attorneys for the respective parties as to the abstract of the issues; that it being a case of live and let live, the attorney for the appellant endeavored always to state the case fairly, and if the attorney for the opposing party considered that the statement did not show everything material, the mere suggestion of that fact would always procure an amendment without the necessity of making a formal application. All the persons who had observed the workings of the system were unqualifiedly in favor of it. This bill, however, was disapproved of by our local association, upon what ground I do not know, as I was not present at the meeting. I imagine, however, that it was because the majority were wedded to the present slovenly method of getting a case before the supreme court and did not consider the advantages which would accrue to the bar at large if the labor of the supreme court to get an understanding of the case could be reduced, and the issues so clearly presented that they could be understandingly considered by the court.

The other matters outlined in the proposed acts which I send you are not of such importance as this, but it may be that you will find among them something worthy of note.

I am very greatly interested in these constitutional amendments, and they have met with such unqualified approval from the lawyers who have considered them that I should like to have them submitted to the State Bar Association for discussion. Even if a majority of the committee do not approve of them, would it not be possible to present them to the Association for its consideration?

Very truly yours,

WILL G. GRAVES.

July 16, 1902.

Hon. Allen Weir, Olympia, Wash.:

DEAR SIR — You are the chairman of the standing committee on Jurisprudence and Law Reform of the Washington State Bar Association, of which I am a member. Enclosed you will find a letter to me from Mr. Graves, of Spokane, together with proposed constitutional amendments and legislative enactments. As I will not be in the country at the date of the next meeting of the State Bar Association at Ellensburg, I forward these papers to you as chairman of the committee, together with Mr. Graves' letter, so that you may be in possession of his ideas.

Concerning the proposed amendments, I wish to say that those proposing to amend section 3 and section 5 of article 4 of the constitution of the state relative to the election of the judges, have my hearty approval, and as a member of the committee I would like to see the State Bar Association adopt the recommendation and make it its own.

Concerning the proposed act relating to saving and settling exceptions, etc., and also amending the act in relation to garnishment in justice courts, and also the act in relation to the fees, and also the one relating to the manner of commencing civil actions, I am not able to give my unqualified endorsement. I am not prepared to say that the legislation therein proposed is an improvement upon our present system, but two of the proposed legislative acts I do unqualifiedly endorse, viz.: the act providing for the allowance of appeals to the supreme court from judgments of appropriations, etc., and the act for the protection of occupants of land who have in good faith made permanent improvements thereon.

As to the other proposed legislative acts which I hereinbefore stated I do not fully endorse, I am not prepared at this time to say they are not an improvement upon our present system, but before I can join in a recommendation adopting those acts I must be made to see that they are an improvement.

Very respectfully yours,

J. T. RONALD.

PROPOSED AMENDMENT OF ARTICLE IV, SECTION 3, OF THE CONSTITUTION OF THE STATE OF WASHINGTON.

ART. IV. SEC. 3. The judges of the supreme court shall be elected

by the qualified electors of the state at large, at judicial elections when none but candidates for judicial offices shall be voted for. Their term of office shall be eight years from and after the second Monday in January next succeeding their election: *Provided*, That the legislature may increase the length of the term. The first judicial election shall be held on the second Monday in July, 1908, and two judges of the supreme court shall be elected for regular terms thereat. A special judicial election shall be held on the second Monday in July, 1908, at which one judge of the supreme court shall be elected, who shall hold office for two years only, from and after the second Monday in January next succeeding his election. A regular judicial election shall be held on the second Monday in July, 1910, at which three judges of the supreme court shall be elected for regular terms. Thereafter the judicial elections shall be held every four years, on the second Monday in July. The number of judges to be elected, and the period of time between elections, shall continue as above fixed until a change in the length of the term, or an increase in the number of supreme judges, when the legislature may alter the time of election and the number of judges to be elected: *Provided*, That no change shall be made which will require the election of all the judges at one election. The legislature may change the date for holding the judicial election: *Provided*, That it shall not be so changed that it shall be held within sixty days either before or after any general state or county election or any municipal election in any city having more than ten thousand inhabitants: *And further provided*, That neither the legislature nor any such municipality shall fix the time for holding any general, state, county, or municipal election within sixty days either before or after the date for holding the judicial elections. Until otherwise provided by law the judicial elections shall be conducted throughout as are the general elections, save as modifications are made herein. The ballot cast thereat shall bear the heading, "Judicial Ticket," and shall have upon it no party name, symbol, or designation. Any person eligible to the office of judge of the supreme court may become a candidate for that position, and shall be entitled to have his name placed upon the ballot and to be voted for at any judicial election, by filing in the office of the secretary of state, at least sixty days before the date of the election, a petition that his name be placed on the ballot as a candidate for that office, signed by not less than one thousand qualified electors of the state at large: *Provided*, That any person who has knowingly received and not declined the nomination or endorsement of any party convention for the office shall not be entitled to have his name placed upon the ballot as a candidate therefor, nor shall any votes for him be counted or considered. Thirty days before the election the secretary of state shall certify to each county auditor in the state the names of such persons as are entitled to be placed upon the ballot as candidates for judges of the supreme court, and he

shall place their names on the ballot to be voted in that county. The result of the election shall be determined and certified as in the case of other state officers until otherwise provided by the legislature. If a vacancy occur in the office of a judge of the supreme court, the governor shall appoint some qualified person to hold the office until the election and qualification of a judge to fill the vacancy, and this election shall take place at the next succeeding judicial election, and the judge so elected shall hold the office for the remainder of the unexpired term. The term of every judge shall continue until the qualification of his duly elected successor. The judge elected for a full term who shall have the shortest term to serve shall be chief justice, and shall preside at all sessions of the supreme court. Where two or more judges have the same short term, the other judges of the supreme court shall determine which of them shall be chief justice. In case of the absence of the chief justice, the judge having the same or the next shortest term shall preside as chief justice. The sessions of the supreme court shall be held at the seat of government until otherwise provided by law. This section shall be self-executing.

PROPOSED AMENDMENT OF ARTICLE IV, SECTION 5, OF THE CONSTITUTION OF THE STATE OF WASHINGTON,

ART. IV, SEC. 5. There shall be a superior court in each of the counties of the state. The legislature shall fix the number of the judges of the superior courts and provide for their distribution to the several courts. In any county where there shall be more than one judge of the superior court, there may be as many sessions of the superior court at the same time as there are judges therein, whether they are judges therein by election, or are sitting as judges therein by assignment by the governor or at the request of a judge or judges of that court, and in such case the business of the court shall be distributed and assigned as may be provided by law, or in the absence of legislation, in such manner as shall be provided by rules or orders of the court. The action of any one or more of the judges shall be the action of the court. For the purpose of the election of judges of the superior courts, a judicial election shall be held every four years in each county throughout the state at the same time that the election for judges of the supreme court is held: *Provided*, That at the special judicial election held in 1908, judges of the superior courts throughout the state shall be elected, but shall hold office only until the second Monday in January next succeeding their election, and at the regular judicial election held in 1910, all the superior judges shall be elected for regular terms. The time for holding elections for judges of the superior courts shall not be changed unless the time for the election of judges of the supreme court shall also be changed to coincide therewith, but any change of the time for holding elections for judges of the supreme court shall operate to change the time for holding the election

for judges of the superior courts. Any person eligible to the office of judge of the superior court may become a candidate for that position, and shall be entitled to have his name placed upon the ballot and to be voted for at any election held to fill that office, by filing in the office of the county auditor of the county for the judge of the superior court of which he is a candidate, at least forty days before the date of the election, a petition that his name be placed on the ballot as a candidate for that office, signed by not less than two hundred and fifty electors of the county or counties in which he is a candidate: *Provided*, That any person who has knowingly received and not declined the nomination or endorsement of any party convention in the county or counties in which he is a candidate for the office of judge of the superior court shall not be entitled to have his name placed upon the ballot as a candidate therefor, nor shall any votes cast for him for that office be counted or considered. No person shall be eligible for the office of judge of any superior court unless he shall be a resident of the county in which such court is held: *Provided*, That when it is provided by law that one person shall be judge of the superior courts of several counties, any candidate for that office shall be a resident of some one of the said counties: *And further provided*, That in such case it shall be sufficient for any candidate to file the original petition that his name be placed upon the ballot in the county where he resides, and to file certified copies thereof with the county auditors of the remainder of the counties. Each county auditor shall place upon the ballot prepared for the judicial election the names of those persons who have qualified themselves as candidates for the office of judge of the superior court for that county. Such names shall be placed under no party name, symbol, or designation, but shall be so set apart or in otherwise distinguished from the names of those who are candidates for the office of judges of the supreme court that the electors shall not be misled as to the office for which the several persons whose names appear on the ballot are candidates. Until otherwise provided by the legislature the result of the election shall be determined and certified as in the case of county officers elected at a general election: *Provided*, That in all other respects the procedure with regard to the election of judges of the superior courts shall conform to that prescribed for the election of judges of the supreme court. The term of office of judges of the superior courts shall be four years from and after the second Monday in January next succeeding their election, and until the election and qualification of their successors: *Provided*, That the legislature may increase the length of the term. If a vacancy occurs in the office of judge of any superior court, the governor shall appoint some qualified person to fill the office until the election and qualification of a judge to fill the vacancy, and this election shall take place at the next succeeding judicial election. This section shall be self-executing.

After discussion by Will G. Graves and Judge Stiles, the report was ordered received and placed on file.

The Association took a recess until 2 p. m.

AFTERNOON SESSION.

The Association was called to order at 2 p. m. by President Mires.

Discussion of the report of the Committee on Jurisprudence and Law Reform was resumed, and was joined in by Messrs. Whitson, Turner, Will G. Graves, Stiles, Howe and Hanford.

THE PRESIDENT—Senator Turner, I have been requested to ask you for information upon the bill introduced by you in congress to Reform the Federal Judicial System, and I now ask you to favor us.

Senator Turner then explained his bill, and was followed by Judge Hanford, who pointed out from his experience the necessity for the passage of the bill.

The following resolution by Mr. Whitson was thereupon passed by the Association:

Resolved, That the Bar Association of the State of Washington gives its unqualified endorsement to Senate Bill No. 5672, entitled "A bill to abolish the circuit courts, to define and increase the jurisdiction of and to simplify appeals from the district courts of the United States, and for other purposes," introduced by Senator Turner. Its passage will give relief to the federal courts in this district, and the reforms therein proposed will, in the judgment of this Association, tend to simplify the practice and reduce the expense of litigation.

The Secretary is requested to forward a copy of this resolution to each of our Senators and Representatives in Congress.

A recess was now taken until 10 a. m. to-morrow.

THIRD DAY.

ELLENSBURG, WASH., August 7, 1902.

The Association met at 10 A. M., President Mires in the chair.

Mr. Root—In furtherance of the resolution adopted favoring Senator Turner's bill, I move that the Secretary be instructed to gather data showing the necessity of its passage owing to the volume of business in the present ninth circuit, and that this data be forwarded to the Judiciary Committee of Congress in the name of this Association.

Motion carried.

Judge Hanford then read his paper entitled "Conflicting Decisions of Federal and State Courts—Our National Constitution the Harmonizer." (See appendix.)

Owing to the absence of Mr. Caton, who was on the program for a paper on "Some Pioneer Judges and Lawyers I Have Known on This Coast," Judge Jacobs was requested to fill the number as a substitute. and responded with an oral address on "Reminiscences." (See appendix.)

Mr. Pruyn next read his poem entitled "A Day in Court." (See appendix.)

On motion, the Association took a recess till 1:30 P. M.

AFTERNOON SESSION.

ELLENSBURG, WASH., August 7, 1902.

President Mires called the Association to order at 1:30 P. M.

Judge Stiles, from the Committee on Jurisprudence and Law Reform, offered the following resolution, which was adopted:

Resolved, That the Washington State Bar Association favors the amendments to Article IV, Sections 8 and 5, of the State Constitution, reported upon at this meeting by the Committee on Jurisprudence and Law Reform as coming from the Spokane Bar Association, insofar as the same propose to provide for separate judicial elections, at which judges of the supreme and superior courts shall be elected, and for the lengthening of the term of supreme judges from six to eight years; but this Association does not favor the nomination of judges by petition, as proposed; and

Resolved, That the Committee on Jurisprudence and Law Reform be instructed to present to the Legislature proper bills for the amendment of the Constitution of the State, in the particulars mentioned.

Also, the following :

Resolved. That this Association favors the passage of the three following proposed acts:

An Act providing for the allowance of appeals to the supreme court from judgments of appropriation, repealing laws in conflict therewith, and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. In proceedings brought by individuals or corporations, private or public, to appropriate real property to a use either public, quasi public, or private, an appeal shall lie to the supreme court from any final judgment or order appropriating or refusing to appropriate the property. Upon such appeal the supreme court shall review the decision of the trial court or jury as to whether the taking is for an authorized purpose, its necessity, the amount of damages awarded therefor, and any other ruling made in the cause to which proper exceptions shall have been saved.

SEC. 2. The practice governing the appeals herein provided for shall be that prescribed by the present or any subsequently adopted act regulating appeals to the supreme court in ordinary actions.

SEC. 3. All acts or parts of acts in conflict herewith are repealed.

SEC. 4. There being no adequate provision for appeals in such cases, an emergency is declared to exist, and this act shall take effect from the time of its adoption.

An Act for the protection of occupants of land, who have in good faith made permanent improvements thereon.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. In an action for the recovery of real property upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely to the claim of

the plaintiff in good faith, the value of such improvements must be allowed as a counter claim by such defendant.

SEC. 2. The counter claim in such action must set forth among other things the value of the land aside from the improvements thereon, and also, as accurately as practicable, the improvements upon the land and the value thereof, at the commencement of the action.

SEC. 3. Issues may be joined and tried as in other actions, and the value of the land aside from the value of the improvements thereon and the separate value of the improvements must be specifically found by the verdict of the jury, the report of the referee or the findings of the court.

SEC. 4. The judgment of the court upon such finding, if in favor of the plaintiff for the recovery of the real property and in favor of the defendant for the counter claim, shall require such plaintiff to pay to the defendant the value of the improvements at the commencement of the action as determined by such finding, less the amount of any damages so recovered by plaintiff for withholding the property and for any waste committed upon such land by the defendant within ——— months from the rendition of such judgment, and in default of such payment by the plaintiff that the defendant shall, within ——— months from the plaintiff's default, pay to the plaintiff the value of the land, aside from the improvements as determined by such finding and the damages, if any, recovered for withholding the land, and for waste committed thereon by the defendant.

SEC. 5. If neither party make payment as above provided, the parties will be held to be tenants in common of such lands, including the improvements, each holding an interest proportionate to the value of his property, as determined by such finding.

SEC. 6. All acts and parts of acts in conflict with any of the provisions of this act are hereby repealed.

An Act to amend an act entitled "In relation to garnishment in justice courts," approved January 31, 1888.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Section 4 of said act (being section 6603, 2 Ballinger's Code) is hereby amended so that it shall read as follows: A notice shall likewise be served upon the defendant in the main action, notifying him that summons in garnishment has been issued against the garnishee defendant, returnable at a certain time, and that such defendant is required to appear and participate in the trial at that time if he desires to contest any proceeding taken therein. It shall be served by delivering a copy to the defendant personally, or by leaving at his dwelling house or place of abode with some person above the age of sixteen years, resident therein, or, if he be absent from the county and have no such dwelling house or place of abode therein, it may be served by publishing it for the time and

in the manner prescribed for the service of summons by publication in original actions in justice courts. If he has appeared in the action by attorney, the notice may be served upon his attorney. Whenever the time or mode of service shall require it, the time within which the garnishee defendant is required to appear in the action shall be enlarged so that he need not appear until the time has expired within which the defendant in the original action is required to appear.

SEC. 2. Section 7 of said act (being section 6606, 2 Ballinger's Code), is hereby amended to read as follows: The garnishee shall answer the affidavit in writing, which shall be verified and signed by him, and make true answers to the several matters set up in the affidavit. The answer shall be served upon the plaintiff or his attorney, and filed with the justice of the peace.

The resolution was adopted.

On motion of Mr. Will G. Graves, the resolution directing the appointment of a committee to draft a bill for the registration of land titles in accordance with the "Torrens System" was taken from the table and passed.

The President appointed the committee as follows: Messrs. T. O. Abbott, E. G. Kreider and J. B. Howe.

The Committee on Obituaries reported that during the year last past three members of the State Bar Association had died, viz.: David E. Baily, of Olympia; W. H. H. Kean, of Tacoma, and Johnson Niekus, of Hilo, Territory of Hawaii. The committee submitted as a part of its report the resolutions adopted by the bars of Olympia and Tacoma, respectively, upon the deaths of Judges Baily and Kean, which are hereto appended.

DAVID E. BAILY.

WHEREAS, David E. Baily, who has been an honored member of the Thurston county bar, during the past ten years, has been removed by the hand of death; and

WHEREAS, We recognize in Judge Baily's life and character a wholesome example, an inspiration to better things: therefore, be it

Resolved, By the Thurston County Bar Association, that in the death of Judge Baily we have lost a most worthy member of this Association, the court has lost a fearless and able advocate, and the community is bereft of an upright citizen of most estimable qualities. His long and active life has been spent in a manner useful to the world and creditable to the profession to which he belonged. His declining years, in a ripe old age, spent among us, sufficed to endear our brother to us by the ties of

personal friendship and esteem. While he has "gone before," we will treasure the memory of his life among us as an example worthy of emulation.

Resolved, That in the death of Judge David E. Baily we lose one who was always honest and manly in the discharge of his duties, deferential to constitutional authority and always fair and courteous towards his brother attorneys. He was thoroughly imbued with that spirit which ought always to animate an attorney, as an officer of the court, wherein he sought to aid the court and jury in all honorable ways to ascertain the truth of matters in dispute, to the end that justice should prevail. We testify to his many excellent qualities of head and heart, and mourn his departure as a personal bereavement.

N. S. PORTER,
PHIL SKILLMAN,
ALLEN WEIR.

Committee on Resolutions.

W. H. H. KEAN.

Death has once more invaded our ranks, and suddenly and without warning taken from among us our beloved brother lawyer, Judge William Henry Hudson Kean, who died at his home in this city on Monday, September 23, 1901.

Judge Kean was born at Warren, Rhode Island, March 12, 1862, and was, therefore, in his fortieth year when he died. During his early years, he, with his parents, removed from Willimantic, Connecticut, to Gibbon, Nebraska, where he worked on a farm, attending the public school, and fitted himself for a teacher. Afterward he attended business college at Grand Island, Nebraska, from which he graduated April 9, 1887; the following year he came to Tacoma and held the position as bookkeeper for the Tacoma Trading Company. Afterward, when the company was formed to publish the Tacoma Globe, he became a stockholder in that company, and editor of the paper, and became a member of the State Press Association.

After Judge Patrick was elected justice of the peace, Mr. Kean was appointed clerk, and while in that capacity studied law with Mr. Burres. In November, 1890, Judge Kean was admitted to the bar and became a member of the firm of McMurray, Burres & Kean. On account of ill health, the judge was compelled temporarily to abandon the practice of law, during which time he taught school at Gig Harbor, in this state. He was married to Miss Marcie Dow, daughter of E. W. Dow, in January, 1890. His widow and two little girls, one nine years old and the other eighteen months, survive him.

Early in the nineties, Judge Kean commenced to take an active part in politics and was appointed by Mayor Fawcett, assistant city attorney under J. P. Judson in 1895. In November, 1896, he was elected one of

the judges of the superior court of this county, which position he held for four years. Upon the expiration of his term of office in January, 1901, he resumed active practice of law in this city, associating himself with Mr. Frank R. Baker, and was so engaged at the time of his death.

He became a member of the Crescent Independent Order of I. O. O. F. in 1889, and in 1897 was elected representative to the Grand Lodge of Washington. He held the office of financial secretary, and other positions of trust, during his membership in the Crescent Lodge, which was recently consolidated with the Rainier Lodge. He was also a member of the Mount Tacoma Rebecca Lodge No. 69. Judge Kean has been a member of the Woodmen of the World since December 22, 1897. He was Junior Past Consul Commander of Tahoma Camp No. 288, Woodmen of the World, and was one of the representatives to the head camp in Salt Lake City in August, 1900.

When he was elected to the bench, it was questioned by many eminent members of the bar whether his age, education and experience was such as to justify the expectations of his warm personal friends, who had been instrumental in placing him in that position; but the first year of his term of office had not expired before the members of the bar recognized in Judge Kean an able, conscientious and honest judge; and before his term of office had expired, not only those who were doubtful as to his ability to fill this important position, but all who appeared before him, were ready and willing to concede that Judge Kean had all those attributes that go to make up a just and able judge.

Immediately upon retiring from the bench, Judge Kean entered upon a large and lucrative law practice in this city, in which he was remarkably successful. He was honest and upright in all his dealings with his clients, and was tireless in the protection of their rights, so that, in his association with his clients, they, not only were clients, but became his friends. His death followed close upon the heels of a hotly contested jury case in the superior court of this county, in which he had successfully maintained the claim of his client.

Judge Kean was a loving husband, a kind and indulgent father, and one who loved his home life.

He was a man of exemplary habits, temperate in all things; a man of wonderfully kind and sympathetic nature and ever ready and willing to lend a helping hand to those who needed assistance.

He was strong and faithful in his friendship and loyal and devoted to all his friends; his heart was filled with gratitude for every kindly act. One who was closely connected with him, both as a friend and in business and politics, has said: "He never went back on a friend or a promise." He was quick to acknowledge an error and ready to forgive and forget a wrong.

We realize that in the death of Judge Kean his family has lost a kind,

loving husband and father; his clients a faithful, able and honest defender of their rights; the bar of the state, a useful and distinguished member; his fellow men, a true and genial friend, and the country, a patriotic, loyal and devoted citizen: therefore, be it

Resolved, That we extend to the family of Judge Kean our heartfelt sympathy in this their hour of deep bereavement.

We sincerely regret his removal from our midst, and in token thereof we move the adoption of these resolutions and ask that they be spread at large upon the records of this court, and that a copy thereof be sent to the family of the deceased.

Dated at Tacoma, Wash., September 25, 1901.

CHARLES O. BATES,
H. W. LUEDERS,
W. H. HARRIS,
F. R. BAKER,

Committee.

The next order of business being the election of officers, resulted in the choice of the following officers:

President	R. G. Hudson, of Tacoma.
1st Vice-President	William A. Peters, of Seattle.
2nd " "	Patrick F. Quinn, of Spokane.
3rd " "	Edward Whitson, of North Yakima.
Secretary	Eugene G. Kreider, of Olympia.
Treasurer	Nathan S. Porter, of Olympia.

The following named members were elected delegates to the American Bar Association, viz.: Judge Hanford, Senator Turner and Judge Stiles.

The time and place of the next annual meeting was fixed at August 25 to 27, 1903, in Tacoma.

On motion of Mr. Whitson, the thanks of the Association was tendered to the bar, the club and the citizens of Ellensburg for their hospitable entertainment.

The Secretary was authorized to have such additional copies of the annual reports printed as may be necessary for distribution, and was further authorized to send copies without charge to applicants therefor.

On motion, the Association adjourned *sine die*.

EUGENE G. KREIDER,
Secretary.

APPENDIX.

APPENDIX.

PRESIDENT'S ADDRESS.

By Austin Mires, of Ellensburg.

Members of the Washington State Bar Association:

Section 1 of our by-laws reads, in part, as follows: The President shall open each annual meeting with an address. This is the warrant and apology for what I may say on this occasion.

It may be referred to as a matter of general congratulation, that the time since our last annual meeting, a year ago, has been a period of unprecedented progress and prosperity. All the varied industries of our country have been increasingly active. Labor has found unbounded opportunity for remunerative employment. Capital has met upon every hand encouraging invitation for profitable investment. Harvests have been fruitful, and, with health and peace added, the year has been one of happiness and contentment.

Our country has demonstrated to the world her magnanimous spirit by setting upon their feet, fully equipped for self government, and has given its guarantee for their guidance and support in that direction, a people, who for generations, had been unable, themselves, to make any headway against tyranny and oppression. An act that shines alone, with no parallel in the history of men.

The commerce of our common country has been extended, and new markets and new opportunities have been opened up to the products, industry and skill of the American people. And the recognition of our country's power and nationality has been established every where.

To the people of our own State of Washington, all these beneficent conditions are especially manifest. While fully enjoying the most advantageous surroundings, we have been entirely free from those physical disasters, that, anon, visit other localities with such terrible destruction. The possible visitation of the cyclone or the flood never enters into the mind of the Washingtonian to disturb his slumber.

The happy condition of our people is attributable, in great part, to that providential choice of location within the confines of the State of Washington, the most favored in climate and health, the most productive and resourceful and destined to become one of the very greatest states in our Union. But something is also due to the temper of the people themselves. Energetic, self-reliant, enterprising, generous and devoted to good order are qualities that have been reflected in their laws and institutions, which can but assure the most felicitous conditions possible.

But along with all our material prosperity and happiness, in a period so fraught with sunshine and song, our Common Country, since our last annual meeting, has had its hour of cloud and sorrow.

A President of the United States, while mingling with his fellow citizens, extending his hand in kindly greeting to all, and with not the smallest cloud in the political or social sky to give the slightest warning, was ruthlessly assassinated. Moved by no enmity against the person of the President, crazed by no excitement growing out of the heat of political contest, maddened by no thwarted ambition for official place, the act was all the more paralyzing to our people for the reason of the absence of all motive. The awful shock came like a thunder bolt from a clear sky, and the recovering consciousness readily saw in it a blow aimed at the heart of the government itself. It was perpetrated by a member of that class of people who teach and declaim against all organized government. The individual that directed the pistol and sent the fatal bullet into the body of the President, was not the real murderer. He was simply the instrumentality by which anarchy carried out its awful decree. The cause that put that instrumentality in motion is now well understood by all people, every where.

Our government is founded upon the equality of all men. Instituted for the very purpose of securing life, liberty and the pursuit of happiness. A government in which the individual is the unit, and in which the government is, itself, the agent of the people, existing in their consent and by their appointment. Out of the very genius and spirit of which government have grown institutions and laws that have provided freedom and opportunity for the widest range of individual effort, respecting not one above another. Institutions and laws that have thrown wide ajar the gateways to success and honor for the free competition of all citizens without selection and without restraint. Institutions and laws that give to the children of all, rich and poor, an equal chance in the great race of life. Under which the child of the beggar of today may possess the wealth of a Vanderbilt tomorrow. Under which the opportunities of the childhood of

Czolgosz, the assassin, stood equal to the childhood of McKinley, the President. Institutions and laws in which political liberty is fully established, which may be defined to be the equal right of all citizens to a full and fair participation in the administration of the government. Under which every boy born to the jurisdiction of our flag stands an unnominated candidate for president of the United States.

It would seem impossible, in such a country, under such a government as this, that anarchy could find a momentary lodgment. It would be more natural to expect to see the individual, born to tyranny, dwarfed and gnarled by an inheritance drawn down through generations of hatred to government, when transferred and placed in the midst of these conditions metamorphosed as if by magic into the symmetrical form of a law loving and law abiding citizen.

But the nature of anarchy is such, its hatred to organized government so intense, and the exercise of its venom so blind and unreasonable that no condition can ever change or assuage. It is as the hate of the serpent to the human race as decreed by the Almighty in the Sacred Garden. It makes no distinction between the tyrant and the benefactor. It seems to exult in seeking out and directing its deadly stroke against the gentlest and kindest officials and rulers of the world. It is directly opposed to the letter and the spirit of our institutions. Its teaching is insidious, treasonable and destructive. None who advocate its doctrines should find a resting place beneath our flag. Laws should be passed that are aimed directly at anarchy itself. No law can be too strong, no sentence too severe for the stamping out of this awful menace to our country.

We recognize how delicate and difficult it is, in a free government like ours, to enact laws that will be adequate to meet this great evil and yet not infringe those principles of government upon which liberty rests. All men, imbued with the spirit of our institutions, resent any encroachment upon free speech. All men ought to resent any encroachment upon the right of free criticism of administrative policy. All law-givers recognize the inherent right of revolution, but none have ever intimated the right of treason to exist any where.

Everybody knows that anarchy is not indigenous to our country. It belongs not of right to America. It could never have originated here. The baneful seed came to our shores with foreign immigration.

Through the magnanimity of our laws, the subjects of other countries have been permitted to renounce their allegiance to their own and become citizens by adoption, of our government; clothed with all the privileges of natural born subjects, save only that of becoming President and Vice-President of the United States. But the time has come when our laws should restrain and inhibit the

naturalization of any and all people, from whatsoever country they may come, until it has been established that they have acquainted themselves with our language and the spirit of our government, and are willing to adopt our institutions, leaving behind and casting utterly away all other theories.

It is humiliating to see foreigners enjoying all the privileges of American citizenship, while so totally ignorant of our language and laws as to be utterly unqualified to perform the duties of such citizenship.

It must be established, that while our country is truly an asylum for the down-trodden and oppressed, it is a land of law. And it must not be misconstrued as a city of refuge for the lawless and the plotting anarchist.

With the grief that enveloped our whole country, on account of the sudden and tragic death of our President, there was made manifest one consoling condition, and that is: our institutions are such, and the confidence of our people in their justice and stability so strong, that in the striking down of the person of the head of our government, be it ever so sudden, the duties and prerogatives of the presidential office pass to another without a jar to the social or political life and without a ripple on the surface of the great sea of American industry, business and enterprise.

The great and good President, endeared to all by reason of his many gentle, Christian and manly qualities, and possessing more political power than the sovereign of Great Britain, had scarcely passed away. ere another American citizen stepped into his place and assumed his official duties and powers. In this transition there is no ostentation, no expensive gathering to witness the crowning of a new ruler. The new incumbent raises his hand and swears to faithfully execute the office of President of the United States, and to the best of his ability preserve, protect and defend the constitution of the United States, and the change in the personality of the President is complete.

On account of the peculiar cause of the death of President McKinley, and from the fact that he climbed from the ranks of our profession to the high station of President, I deem it not out of place for the President of this association to pay a passing tribute to his memory. His birth, his life and his death have become the heritage of our country. As a lawyer, he was industrious, courteous to his brethren, ardent in his client's cause and faithful in all things to the demands of his great profession. He ever held the confidence and esteem of his neighbors and fellow citizens. He was true to his friends, and for this reason his friends were faithful to him. Their fights were his and his contests were theirs. The timid child, instinctively and

without hesitation, placed its hand in his, and to the bended form of age he bared his head in filial deference. He was honest, unselfish and confiding himself and could not, therefore, suspect treachery in others. He was modest and kind, yet in every position to which duty called him, he demonstrated that these gentle qualities are the natural concomitants of sternness and heroism. He was clean of heart and his home life has already become the type and example to which the devoted mothers of our country may proudly point their sons for emulation. And in training up a citizenship to his standard, will establish the American home in purity and love, and therein assure the highest and most enduring patriotism, for "in the love of home the love of country takes its rise."

Actuated to some extent by the reflections just made upon the question of anarchy, I now desire to call attention, briefly, to the fact that so many of our positive laws are disobeyed and disregarded, with so much unconcern by our people.

Laws are placed upon the statute books to be enforced. If they are not in existence for this purpose they have no business to be in existence at all. Laws are simply rules adopted by society for its government. What ever the policy of that society may be ought to be reflected in its laws. The law maker is the agent of society. He is chosen by a majority of that society. It follows, therefore, that the law, as a general thing, is not the expression of any particular class of that society, but the collective will of all. It may not meet the views of this or that class, and will not, unless such class becomes strong enough to constitute the majority and thereby dominate the will of all. But, though the law provided by these agents may not meet the desires of certain classes, it is never-the-less binding upon them. Whatever the majority adopts as a rule of conduct, is entitled to the recognition and obedience of all. The man who opposed it is under just as strong obligations to obey it as he who sought its enactment. The very genius and spirit of our government rests upon this theory. So that the enforcement of every law on the statute books of the state becomes the duty of all departments of government, and all officials of that government. It is simply idle to say this or that law should never have been enacted, for while it does stand it is the living duty of all citizens to join in its enforcement.

From what has been said, it is clear that all laws should be backed by strong public sentiment. Communities, as well as individuals, are subject to spasmodic waves of agitation, sometimes moral, sometimes immoral, and under the stress of momentary pressure, laws may be passed that do not reflect the sentiment of the majority after that society has recovered its normal condition. The result is clear,

in such case, there will be no public sentiment strong enough to enforce such law. Society should, itself, rectify its mistake as soon as it has recovered, by an immediate repeal. For it is no more the province of the legislature to establish morals than it is to legislate what shall be history. But until such laws are repealed they should be vigorously enforced.

Time will not permit me to recite all the laws that stand as dead letters on the statute books of our State. An instance or two will suffice.

What are termed the Sunday closing law and the law against gambling are enforced in some localities, of our state, in others they are unheeded. It would be impossible for a stranger, coming into the State of Washington, who desires to live up fully to the rule insisted upon by the community, to ascertain that rule from a reading of the statutes, the place where all such rules ought to be found. For if he should happen to fall into a community where these laws are not enforced by public sentiment, and there insist upon the enforcement of the letter of the statute, he would be denominated a crank and disturber of public conditions. While, on the other hand, should he change his location to a community where these laws are enforced and there insist on disregarding them, he would be considered a lawless man. Such conditions should not exist.

The failure to enforce the laws on our statute books produces a dangerous example. It tends to breed contempt for all law. The generation of young men and women just coming into the responsibilities of citizenship, together with the foreigners arriving in our country, witnessing the constant infraction of statutory enactments, with so much unconcern and disregard by our people, cannot easily understand what constitutes a law abiding citizen, nor can they be strongly impressed with the sacredness of our laws. And looking upon and considering these conditions, they are apt to reason that if one law can be violated with impunity why not another? It would be far better if all laws not enforced were wiped off the statute books, than to stand thus engendering evil.

The carrying of deadly weapons is a menace to the peace and good order of society. There is not the shadow of an excuse for this habit in our state. We have a law against it, but the same is violated continually and everywhere, and there are virtually no punishments for its infraction. There is no reason why this law should not be rigidly enforced. All law abiding citizens are in favor of it, and yet the habit continues, and the effects therefrom are pernicious in the extreme. There have been four murder cases in my own county within the past year, resulting alone from the fact that parties were

violating this wholesome law and had deadly weapons at hand in the heat of personal controversy. The law should be made strong enough to suppress this growing evil entirely. The officers of the law should be obliged to arrest persons known or suspected to have deadly weapons upon them, and any failure to perform such official duty should cause a forfeiture of office at once.

It is well known that all public officials are required to take an oath to support the constitution and laws of the State and to perform the duties of their office to the best of their ability. This oath was intended to furnish a guarantee for the faithful performance of official duty. But to the close observer, it has degenerated into an idle formality, an empty farce. There is no penalty for the violation of the obligations of an oath, be that violation ever so flagrant. He who feels his responsibility so strong that he endeavors to perform his full duty under the oath he has taken, would perform that duty without an oath.

Jurors go into the jury box and swear to try the matter at issue according to the law and evidence given at the trial, and, after retiring to consider of their verdict, utterly and willfully ignore the evidence, and render verdicts upon matters and things entirely outside the case.

For every willful violation of the obligations of the oath there should be a severe penalty provided. Our statutory definition of perjury is entirely too narrow. It ought to cover all willful perjury, among which should be classed the intentional violation of an oath, official or otherwise, that the law requires to be administered.

The legislator is just as much the agent of the people as is a judicial, executive or ministerial officer. He is under just as strong obligations to act, within the sphere of his agency, according to the injunctions of the constitution and the general policy of his constituents, as any other officer. Our State Constitution, Article 1, Section 29, reads as follows: "The provisions of this constitution are mandatory, unless by express words they are declared to be otherwise." Now there are found in our constitution some thirty positive commands to the legislature, many of which the law making body has seen fit to observe by enacting laws in accordance therewith. But many others, equally as binding, have been utterly ignored from the meeting of our first legislature down to the present time. I cite a single instance. Article 2, Section 39, reads: "It shall be unlawful for any person holding any public office in this State to accept or use a pass, or to purchase transportation from any railroad or other corporation, other than as may be purchased by the general public, and the legislature shall pass laws to enforce this provision." Article 12, Section 20, reads as follows: "No railroad or other transportation company shall grant free passes, or sell tickets or passes at a discount,

other than as sold to the public generally, to any member of the legislature, or to any person holding any public office within this State. The legislature shall pass laws to carry this provision into effect."

The constitution positively and clearly declares the accepting of a pass as well as the giving of the same, to public officials, to be unlawful, and in both cases commands the legislature to pass laws for the enforcement of the same. There can be no question that the giving and accepting of passes in the cases mentioned are unlawful in this State. The adding of a penalty by the legislature for the violation of these laws could render such violation no more unlawful than it is now, neither would it create any new or greater obligation on the parties mentioned.

The constitution is the supreme law of the State. It is the act of the people in their sovereign capacity. All citizens are under the strongest obligations to obey, protect and defend it. And the public official is further obliged by his oath to do so. And yet these salutary provisions have been persistently disregarded and ignored. It is argued that the observance of these constitutional provisions are matters that rest in one's own conscience. This argument, carried to its logical conclusion, would be that the man with the keenest conscience would be the greatest law breaker, while he who possesses no conscience could not be a violator of positive law. This may be a good theory for the speculator in moral science to advance, but it won't work as a rule of law.

Now I want to ask this question, when a legislator or other public official, who has taken an oath to support and defend the constitution of the State of Washington, accepts a pass contrary to the positive provisions of that constitution, does he violate his obligation? And when a legislator takes such an oath and refuses to carry out the positive injunctions of that constitution, does he violate his obligation?

Since the law stands as it does, there should be ample provision made by the legislators to enforce it. No legislator is faithful to his oath nor his duty who fails to assist in passing such law.

This Association declares its object to be: To cultivate the science of jurisprudence, promote the administration of justice, uphold and advance the standard of integrity, honor and courtesy in the profession and to establish and cherish a spirit of brotherhood among its members.

The good that must accrue from the attainment of these laudatory objects will redound, not alone to the legal profession, but in larger measure to the community in general. Every member of our profession, in the State of Washington, should be induced to become a member of this organization. By a more thorough and general or-

ganization, we would be brought into closer and better relations with the law making body of our State.

It cannot be denied that the legal profession should, and does, exercise a greater influence over legislation than any other class of citizens. I refer to legislative enactments by the representatives of society in its normal condition. There are periods, as we are all too well aware, when the people become affected with some temporary agitation to the extent of panic. The craze is nearly sure to be reflected in statutory enactments. At such times the lawyer is disregarded, his advice unheeded and his suggestions opposed.

The lawyer comes in daily contact with the law. He is first to discover its beneficial results or its evil tendencies. He is first to discover its inconsistencies with existing laws that it is not intended to repeal, and its non-conformity to constitutional provisions. Every one who knows anything about our statutes is aware that there are many inconsistencies that should be reconciled. That there is need of many amendments in the way of new laws as well as repeal of old. Who will make these needed changes? Who will call them to the attention of the law making department of our State government? The average legislator cannot, because, in the first place, he does not know wherein they exist, and in the second place he does not know how to find them out. He knows nothing of the constitution or laws when he enters the legislature, and less when he gets through. But there is one consoling certainty: That if the law making body operates entirely independent of, and without the direction of, the legal profession in the first place the result of its work cannot escape the criticism, judgment and correction of the Bar and Bench at the last.

I confess my inability to suggest any sure method of bringing the legal profession and the law making body into near and proper relationship, further than a thorough and general organization of the members of the bar.

Although every reflecting man knows that the lawyer is the only person duly qualified to suggest proper and needed changes, and to formulate proper and needed laws, still there exists in many localities a strong prejudice against his having anything to do with legislation. Not long since, if newspaper reports may be credited, a so-called Tax Payers' League, held in one of our large counties, resolved that the lawyer ought to be debarred from the legislature. That same meeting attributed the cause of high taxation to the legal profession. And I am not slow to believe that the same empty headedness would as readily, and with as much reason, ascribe to the legal profession the cause of drouth or the visitation of grasshoppers.

The lawyer needs no vindication at my hands. His work for the

betterment of mankind is evinced in imperishable monuments. They consist in the statutes and decisions upon which rests the free institutions of our country. Others, speaking heretofore, from the position now occupied by me, have fittingly and eloquently illustrated the part acted by our profession in the struggle for liberty and the advancement of civilization. But no earned tribute can ever close the lips of the ignorant blatherskite. That class blame the lawyer because the criminal goes free, but they are the first to sympathize with the condemned culprit or the escaped convict, and, when they can do so without danger to themselves, offer consolation and assistance. What is intended as the severest censure on their part, becomes to the lawyer the highest compliment.

The accumulated wisdom of ages of experience under the common law system has finally made it certain that no man however poor, however low, however despicable can be convicted of any crime without a trial by jury. And at such trial the accused is assured of the services of an attorney versed in the law. Too often, as all active practitioners know, the attorney is appointed by the court and compelled to act without any compensation. But it is a well known fact that when an attorney does assume such task, voluntarily or otherwise, it is almost universally true that he proves faithful to his trust, and gives to his client his best efforts. He may know the accused is guilty and everybody else may think him guilty, but that can make no difference, he is in duty bound to make the best defence possible. He is blamed for performing his duty. He is blamed for making a vigorous defence, but he serves the law, and that law must be satisfied at every stage of the trial or the accused set free.

It is a matter of pride to every lawyer, and should be a matter of pride to all men, that in the history of our great profession, it has been a universal rule, with but few and isolated exceptions, that the lawyer has been ever true to his client's cause. The party may be accused of the most heinous crime known to our laws. The community may be against him, the public press may be his enemy, he may be a pauper and without a relative and without a friend, but the lawyer is careless of these conditions, and in his attorney the accused has a friend to the end of his trial. The world is full of illustrations where, in the various walks of life, others have proven recreant, but the lawyer to his client never. His fidelity has become proverbial, and, in the eyes of reflecting and honorable men, it elevates and ennobles our profession.

The closing lines of the beautiful tribute of the rustic Bard to his friend, but illustrates the constancy of the lawyer to his client's cause:

"The bridegroom may forget the bride
Was made his wedded wife yestreen;
The monarch may forget the crown
That on his head an hour has been;
The mother may forget the child
That smiles sae sweetly on her knee;
But I'll remember thee, Glencairn,
And all that thou hast done for me."

Our profession in the future as in the past, must shoulder the responsibility of all needed reformation in the law.

This organization has called attention, year after year, to many things that should receive the prompt action of the legislature, but with indifferent success.

There has been no session of our legislature since our last annual meeting. At that time our President, in his address, made many timely suggestions, which I desire to recall to the attention of the association at this time, by a reference to the record. I reiterate the suggestion therein, that a special committee on legislation be appointed, consisting of a number of active members of the bar, who will attend the next meeting of the legislature and call attention of the law making body to all these matters, in a manner that will result, if possible, in beneficial legislation to our State.

Our probate law and road law should both be repealed and entirely new laws enacted in their stead. Many other like suggestions might be made, but I shall trespass no longer on the time of the association.

And now in the name of my people, the citizens of Ellensburg, and more especially the members of our local bar, I bid our visiting members a most hearty welcome, one and all. You have the freedom of our city. There will be none to molest or make you afraid. The city attorney happens to be your president, and the city marshal has been duly "seen." The city jail has been condemned, the door is off its hinges and the lock is lost, and by some inscrutable stroke of good fortune our police judge has been rendered physically unable to hold court.

I most earnestly hope none may ever regret their visit here, at this 14th annual session of our association.

Knowing the vanity of mere word assurances on occasions like this, I crave pardon for expressing our real spirit in the brief but comprehensive phrase of the wise Portia:

"Sirs, you are very welcome to our house;
It must appear in other ways than words,
Therefore, I scant this breathing courtesy."

THE COURSE OF LEGISLATION IN WASHINGTON.

By Edward Whitson, of North Yakima.

The Territory of Washington was created by Act of Congress approved March 2, 1853. Since that date sixteen annual, sixteen biennial and two extra legislative sessions have been held, at which were adopted, including indices, 11,942 pages of statutory enactments, to which may properly be added Hill's and Ballinger's Codes, and the Code of 1881, which aggregate 4,905 pages, making a total of 16,847 pages of statute law, which it is the province of the lawyer to examine and construe to the end that its relation to property rights, past, present or prospective, may be properly understood.

It will be observed that there has been an average of 249 pages of legislation annually, and if codification be included, an average of 355 pages. It is but fair to say that this immense volume embraces local and private laws, and includes memorials and resolutions; but excluding these, it is sufficiently large to challenge the attention of the people of the state, as well as the members of the bar. If these enactments related to different subjects, or if it were ever in the least necessary for the conduct of the public business that they be enacted at all, the practitioner might be sufficiently patient to console himself with the thought that his calling necessarily leads him into a wilderness of this kind; we will presently see, however, that there has been much unnecessary repetition, many re-enactments and radical substitutions, few, if any, of which have contributed to the public good.

For instance, one of the important subjects, perhaps the most important, with which legislatures have to deal, is the enactment of revenue laws. The legislative assemblies of our commonwealth have certainly shown their appreciation of the importance of this subject, because it has received attention, with singular persistency, in some way, at every session since the organization of the territory.

Fourteen distinct revenue systems have been adopted, oftentimes radically different, but as a rule the later enactments no better than the ones they were intended to displace. Prior to the admission of the territory as a state, ten complete acts upon the subject had been adopted, and at every session of the legislature from 1854 to 1901, either changes or important amendments have been made.

Upon the admission of the territory as a state, it would naturally occur in adapting ourselves to the changed condition resulting from the transmutation from territorial to state government, that it would become necessary to pass a new revenue law. Accordingly, at the first session of the legislature, in 1889-90, a complete system was adopted, consisting of 62 pages, which were entirely superseded in 1891 by an act of 46 pages, which was again replaced by the act of 1893 of 48 pages, and by another in 1897 of 57 pages, although it should not be supposed that the session of 1895 would leave the subject untouched, for the act of 1893 was amended to the extent of six pages. In 1899, 17, and in 1901, 12 pages of amendments were adopted, and the end is not yet.

When it is considered that these enactments would make a volume of 474 pages, exclusive of index, the extent of legislative tinkering and experiment will be fully realized. Of all the subjects which the lawyer has to deal with, the revenue law is the worst nightmare; these changes in that which ought never to change, have produced perhaps as much perplexity as any one thing connected with legislation. Sometimes saving clauses for taxes already levied have been provided for,—in fact, they generally have,—and yet there are enactments which leave the matter in sufficient doubt to aggravate the tax payer and perplex the lawyer.

Nor has the record been better in the enactment of school laws. In 1860 a school system was adopted, consisting of 10 pages. It was superseded by an act of 1863 of 17 pages, which in turn was displaced by an act of 1866 of 12 pages, which gave way to the act of 1867 of 13 pages. In 1871 a new act was adopted of 15 pages, in 1873 an act of 17 pages was passed, which repealed all former acts; in 1877 an act of 24 pages was enacted, which likewise repealed all former acts, and in 1883 an act of 21 pages was passed, with like effect. In 1885-6 a new system of 25 pages was adopted, and in 1887-8 there were numerous amendments. This legislation was superseded in 1889-90 by an act of 47 pages, which latter act was amended in 1893 by an act of 4 pages. In 1897 a new act was adopted consisting of 93 pages, which repealed all existing laws, and this act was radically amended in 1899 by an act of 21 pages, and in 1901 amendments were adopted by three distinct acts, aggregating 20 pages,

making a total of enactments upon the subject of the common school system of 345 pages.

The road law has fared no better than the revenue and school laws. These three subjects seem to have been a shining mark for legislators.

The first road law appears, so far as I can discover, to have been passed in 1863. How the early inhabitants of the territory got along for ten years without roads may perhaps be explained by the fact that they since have gotten along without them. The first act contained 21 pages. This law remained in force until 1865, when it was repealed by an act of 16 pages, which, with minor amendments, remained in force until 1868, when it was superseded by an act of 13 pages, which repealed all former legislation upon the subject; and in 1869 a distinct system of 19 pages was passed, which repealed all former acts.

The legislature of 1877 contented itself with amending the road law, in a modest way, but that of 1879 passed an entirely new act of 20 pages, which was permitted to remain upon the statute books until the session of 1889-90, when a new statute repealing all former acts was passed, of 36 pages. This act remained until the session of 1893, when it was expressly repealed, and an act of 9 pages substituted. In 1895 the act of 1893 was expressly repealed, and a new law of 6 pages enacted. Notwithstanding the fact that legislatures had been incessantly enacting road laws for over thirty years, we find this interesting repealing clause in the act of 1895:

"Whereas, the existing laws relating to the viewing, laying out, surveying and establishing county roads are deemed defective, and the subject is one of great importance, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval by the governor."

This repealing clause, with its implied intimation that the act to which it was appended, did supply means for the laying out of county roads which could not be "deemed defective," seems to have justified the hopes of its framers, for it still remains the law, with the exception, of course, of amendments, which have been made at every subsequent session of the legislature. The aggregate of road legislation is 147 pages.

We have not been more fortunate in matters of practice. The first civil practice act was passed in 1854, and consisted of 184 pages. Since that date the legislatures of the territory and state adopted complete practice acts in 1863, 1869, 1873, and 1877, and brought forward, with amendments, another in 1881; it is safe to say that no session of the legislature ever adjourned without some addition

or amendment. These enactments aggregate, including amendments, 736 pages.

There have been adopted five distinct criminal codes, aggregating 338 pages; five probate practice acts, aggregating 325 pages, four justice practice acts, aggregating 253 pages, making a total of 1652 pages of legislation, exclusive of codification, which have been devoted to practice acts.

If these acts had been substantially different, the excuse might appear that it was found necessary to change, although in the opinion of the writer that would be no excuse; but they have been practically the same, with just enough of change, amendment and disfiguration to render them uncertain.

These particulars have been called to attention because the subjects mentioned embody the most flagrant examples of the tendency to over or unnecessary legislation; but throughout the session laws, from the organization of the territory down to the present time, may be found numerous acts either displacing or amending acts already in existence, such as divorce laws, election laws, lien laws, estray laws, laws creating county offices and defining their duties. The various county offices have been created over and over again by acts entitled something like this: "An Act Creating the Office of Sheriff, and Defining His Duties." This thing has gone on, until, as we have seen, the session laws have run into thousands upon thousands of unnecessary legislative enactments, which bewilder the lawyer, make the Courts doubtful, render rights uncertain, remedies inadequate, and the only beneficiary of which seems to have been the public printer. This is one tendency.

It is no greater evil, however, than the tendency to legislate upon subjects which should be left to the Courts. Many statutes are nothing more than a recital of the common law, with just enough blundering or omission to add to the perplexity. A few examples of this tendency will suffice.

Take the lien laws as an example. The inn keeper at the common law has a lien upon the baggage of his guest for his charges, and, so far as I can discover, the statute has not enlarged this right. An attorney has a lien upon the papers of his client for his fees, and the statute has not rendered this right more extensive, nor the remedy for its enforcement more complete.

The matter of water legislation is equally worthy of note. The first state legislature devoted 77 pages to drainage, water and water rights. There had been prior to that time, at least a dozen acts relating to drainage; but waiving this, which belongs more properly to the first branch of the subject, it is sufficient to remark that,

exclusive of drainage, this transplant from Colorado consists of a bunglesome mass of stuff that no lawyer, so far as I am aware, ever tried to invoke, is wholly inapplicable to our condition, mostly in conflict with our constitution, and if it were not, wherever it does contain valid provisions, those provisions are simply recitals of well established legal principles.

The subject of water rights, as applied to irrigation, is simple, and perhaps as well understood by the Courts and lawyers as any other branch of the law. Barring the controversy regarding riparian rights and appropriation, the Courts are in harmony, and the manner of acquiring the right to the use of water, and the method of using it are well understood. Very little, if any, legislation is needed, and the most of that which has been enacted has only tended to confuse. This legislation, apparently, is the result of to confuse. This water legislation, apparently, is the result of shortage of water in certain communities, and the theory seems to have been that legislation can increase the supply.

Another illustration may be found in the act passed by the legislature in 1899 relating to negotiable paper. This act is a substantial transcript of the law merchant, with some of the best features eliminated; and the excuse for it is that uniformity may be maintained all over the country; but this idle dream can never be realized so long as legislatures meet. What is uniform today will not be uniform tomorrow; and if it were possible to have uniformity to start with, which it is not, subsequent legislation would soon destroy it.

But this is perhaps not the worst tendency. Legislation most to be deprecated is the disposition to regulate by statute matters which are not proper subjects of legislation. The lien laws have run riot. This legislation originated out of the idea that the laborer, without opportunity, and oftentimes without ability to ascertain the responsibility of his employer, is in equity entitled to a lien upon the product of his hands; and this beneficent principle was enacted into law for his protection. But now, the material man, who needs no protection, is provided with a lien; the horse trainer has a lien upon the horse trained; one who furnishes feed to stock upon the stock fed; the herder for herding the same; the landlord on crops, as security for rent; the contractor for raising, harvesting or threshing grain; boom companies on logs floated; the fruit inspector on trees unlawfully brought into the state, for disinfecting; the contractor, a lien for work done in the excavation of water ways; the owner of a sire, for services on the female served; the livery stable keeper, on the stock kept; the farmer for pasturing stock; the contractor for

constructing, repairing or equipping a vessel; and doubtless many more might be mentioned if the statutes were thoroughly searched. So numerous have become these enactments, that one is inclined to view with kindness, in any event without disrespect, the inquiry made in the office of the writer, whether a young man who has procured a license to marry has a lien upon the girl,—at least, the statute should be consulted before giving a definite answer.

Again, the license and commission laws have gone beyond bounds. We have a dairy commissioner, with elaborate statutes defining his duties; a state grain inspector, as a sop to the farming interests; we regulate tolls for grist mills, and provide that the mill man shall assist in carrying the grist in and out of the mill when the owner of the grist is unable to do so; we hedge about the commission merchant with provisions supposed to protect the foolish farmer against improvidently entrusting his products to irresponsible people,—but the fake commission man is still in business. We provide for a liquor inspector, to be appointed by the county commissioners. His duty it is to inspect liquors, and he has, under certain circumstances, the right to retain possession of them. This seems to be a desirable office. We have licensed the sale of cigarettes, and your advent into the world must be registered, and your exit recorded.

We have a state veterinary surgeon, whose duty it is to make trouble for people shipping domestic animals through the state; we license blacksmiths to shoe horses, and have created a board of examiners to pass upon the qualifications of applicants for license; we license barbers, and a state board of examiners has been created to pass upon the competency of applicants, and to issue licenses. The practice of medicine, dentistry and pharmacy are legitimate subjects of legislation, but there is no need of incumbering the session laws of every session of the legislature with new enactments upon those subjects.

The territorial legislature in 1875 passed an act regulating the sale of eggs by weight. That was twenty-seven years ago,—but the legislature of 1901 passed an act regulating the sale of spectacles and eye glasses. This brings us down to date—and it is hard to say which is the most legitimate subject of legislation.

But the most distressing of all legislative abuses is the tinkering with matters of practice, which should be uniform. The method of commencing an action has been repeatedly changed, and the evil of it is that, in the examination of titles and the consideration of questions of jurisdiction, the lawyer must keep eternally before him the law in force at the time when the judgment was rendered or

the right accrued, to say nothing about the time spent in becoming familiar with a new practice from time to time.

One method of commencing an action is perhaps as good as another,—at least, the present method seems to be perfectly satisfactory to the bar. It is expeditious, convenient and inexpensive, but if any better method could be devised, it would certainly be unwise to adopt it.

Appeals to the Supreme Court are yet a matter of perplexity. After nearly fifty years of tinkering with the subject, it is quite as difficult for the lawyer to plant his feet firmly upon his cause in the Court of last resort as it was in the beginning. It has not been the fault of the Courts, although it must be admitted that they cannot be held wholly guiltless. The principal fault has been in the tendency to change the method by which appeals are taken. The statute is scarcely construed and understood by the bar until a new one makes its advent. It may be assumed that there are few lawyers in the state who dare to take an appeal to the Supreme Court without carefully consulting each provision of the act in force at the time of the appeal, to avoid the possibility of mistake; not that it is so very difficult to take an appeal, or that it requires so great an amount of professional skill, but it takes so much care and time, because no lawyer can remember the statute from session to session.

There should be in this, as in all other matters of practice, a well-beaten path, and while the present law may not be the best, we ought to be thankful if subsequent legislatures let it alone.

Then again, the burdensome practice of this jurisdiction is almost intolerable. Never having practiced in any other, I cannot make comparisons from personal knowledge; but the consensus of opinion seems to be among those who have, that we have contrived more unnecessary things for the lawyer to do than any of our contemporaries.

The matter of mortgage foreclosures,— which a friend of mine, by-the-way, once truthfully remarked is not practicing law at all,— will illustrate. The complaint must properly describe the mortgaged property. This description must be traced through the notice lis pendens, the summons by publication, if service is obtained in that way, through the findings of fact, conclusions of law and decree, the execution, sheriff's notice of sale, sheriff's return, order of confirmation, certificate of sale, sheriff's deed, and entry in the book of levies.

The practice of requiring exceptions, and tendering findings of fact, has assumed colossal proportions. There was a time when everything was deemed excepted to. The name of the man who is

responsible for incorporating that provision in the statute should be of blessed memory, even though subsequent legislation has wiped out his efforts at simplifying the practice.

The tendering of findings of fact in an equity cause is an unnecessary burden. The prevailing party should be right, and wholly right, or the judgment should not be sustained in the Appellate Court.

A conscientious review of the session laws from the organization of the territory down to the present time will not justify the conclusion that any improvement has been made in the matters to which your attention has been called. This summary has of necessity been incomplete, the limits of a paper of this character precluding a more extended reference to the matters discussed, and a review of thirty-six volumes of statutory law is impossible in the time allotted.

The natural inquiry is, is there any remedy for this kind of thing? It may be gravely doubted whether there is. It has been suggested that codification is the method, but codification will never be of avail so long as legislatures meet. It has a tendency to wipe out the past, but it cannot guard against the future.

One reason for this state of affairs in this jurisdiction is the cosmopolitan character of our population. The lawyer from some other jurisdiction becomes accustomed to a certain practice, and when he becomes a member of the legislature, proceeds to engraft that practice on his fellows. He thinks the practice to which he is accustomed is the best. Probably the great majority of the members of the legislature do not know whether it is or not, and hence he succeeds in making the change. Thus, the lawyer is responsible for this tendency. This should not convey the idea that lawyers make bad members of the legislature, because as a rule they do not; and the ignorant idea that the lawyer is inclined in legislation to contrive complications productive of litigation has no foundation in fact.

There is another thing politicians are responsible for. The people tolerate this thing because they do not know about it. Statesmanship now consists in getting the biggest slice out of the public treasury for the particular community where the statesman lives; at least, he must devote that portion of his time to that end which he has left after distributing offices to his constituents, and building up his political machine. This naturally leads to the idea which so generally prevails that there is some kind of magic in legislation. Even a candidate for the legislature must make some kind of pledge as to what he is going to do for his constituents. No candidate ever dares to say that the best thing he could do would be to leave them alone.

Until the demagogue quits preaching the efficiency of legislation to confer substantial benefits upon the people, this kind of thing will probably go on. Outside of a few general economic questions, such as the control of the currency standard, the regulation of the tariff, etc., there can be no benefit derived from legislation. The old maxim that that country is governed best which is governed least is particularly applicable. The people should thoroughly understand that nothing by way of benefit can accrue in the enactment of laws which burden and incumber, and that the more simple the laws and the less machinery connected with them, the better it is; that no community, principality, nor state, can make itself rich or improve its condition, by the taxation of the people. The matter of expense in the passage of these laws is no inconsiderable item, and no doubt has greatly tended to add to the burdens of the tax payer.

Perhaps it is not an exaggeration to say that 75 per cent. of the time of the lawyer is taken up with these unnecessary details of practice. No lawyer in active practice in this state has time to be a lawyer; he has no time to devote himself to the merits of his cause, nor to properly consider the rights of his client. It may be suggested, doubtless with some force, that the course of legislation such as has been described, is fruitful of litigation, but it is not fruitful of the right kind of litigation, and it is not productive of great lawyers; and, even if it were, it would be a poor answer in justification of such abuses.

If legislatures did not meet oftener than once in ten years, the public would be the gainer. It would at least avoid the necessity which the business interests of the state now find it necessary to resort to, namely: To litigate in a perfunctory way the validity of bond issues before making investments in public securities.

My conclusion is that the lawyers of the state can render some practical service by opposing instead of proposing radical changes in our statute law; that a bad law is better than a new one; that in the matter of rendering the practice less burdensome, there may be some excuse for legislation; but it is so hazardous and dangerous an experiment, that it is better for the lawyer to content himself with bearing the ills he has than fly to others he knows not of, upon the theory that, if the present laws are not changed, the burdens will gradually grow lighter as they become better settled and construed by the Courts. It is one of our maxims that every person is conclusively presumed to know the law, but who can know the law in this jurisdiction?

STABILITY OF LEGAL PRINCIPLES—A THING OF THE PAST.

By Will G. Graves, Spokane.

Some apology may be due the Association for presenting a paper upon a subject which has lately become somewhat hackneyed. If so, my apology is that I regard that of which I write as an exigent evil, against which the voices of all lawyers should be raised at all times and in all seasons. I know of no place where their protests can be more effectively made than before such an assembly as this.

Stare decisis, et non qujeta movetur, is a rule which was once respected in theory and observed in practice by the courts. Whatever may be said as to the theory at the present time, in practice the rule is abrogated in the courts of last resort in the United States. One principle is said to govern, and to require a certain decision, in a cause decided today, while another principle, requiring a wholly different decision, is tomorrow held to rule an entirely similar cause, and this, in most instances, without comment, even, upon the conflicting ruling.

That this statement may not seem unwarranted, I shall refer to a few decisions rendered by the Supreme Court of the United States, and by the Supreme Court of this State, which, I consider, fully substantiate it. I do not call attention to these decisions because those courts are singular in their disregard of their own rulings, but because their decisions are of so much greater moment to the lawyers of this state than are those of other courts. I may add, also, that it must not be supposed that these decisions are the sum total of the conflicting decisions of those courts. Time and space forbid that I should do more than select a few illustrative cases.

I refer first to decisions of the Supreme Court of the United States.

Under the act conferring jurisdiction upon the Circuit Courts of the United States of suits of a civil nature arising under the Constitution or laws of the United States, it must appear upon the complaint, from the plaintiff's statement of his case, that the suit involves the construction of those laws. A statement that the defendant does or will claim something under them is not enough. *Tennessee v. Union and Planter's Bank*, 152 U. S., 454. A complaint which alleges that the plaintiff is a preemptor of public lands of the United States situate in Washington Territory, and has done all things necessary to entitle him to a patent; that the defendant, a railroad corporation formed under the laws of the territory, entered upon and seized a strip of those lands for right-of-way purposes, without making compensation therefor; and that the entry and seizure was pursuant to the laws of the territory authorizing railroad corporations to appropriate lands for right-of-way purposes, states sufficient facts to give the federal courts jurisdiction under that act. This because the court took judicial notice that the power of the territory to legislate on the subject of rights-of-way across the public lands was derived from an Act of Congress; as the defendant claimed under that act and the plaintiff under the preemption act, a decision as to which had the better right called for a construction of those laws. *Spokane, etc., R'y Co. v. Ziegler*, 167 U. S., 65. But a complaint which alleges that the plaintiffs are owners of lands by virtue of a patent granted upon a perfected preemption claim to public lands of the United States, and that the defendant, a railroad corporation, had seized a portion of the lands for right-of-way purposes, claiming a right superior to that of the plaintiffs by virtue of certain acts of Congress, does not allege sufficient facts to show jurisdiction in the federal courts. *Florida, etc., Co. v. Bell*, 176 U. S., 321. The Circuit Court, and the Circuit Court of Appeals, could not see wherein that case differed from the *Ziegler* case, and therefore held that jurisdiction was shown. In reversing that ruling, the Supreme Court did not enlighten as to the distinction. The reader of the two cases will have no difficulty in concluding that the distinction lies in the fact that in the *Ziegler* case the action was brought in the state courts, and was removed by the defendant into the federal courts, and that the suggestion of lack of jurisdiction was first made by the defendant in the Supreme Court, after being defeated in the Circuit Court and the Circuit Court of Appeals. It must have cost the plaintiff in the *Bell* case quite a little sum to discover that the jurisdiction of the federal courts depends upon the hardship of the case if jurisdiction be denied.

Where a grant of lands in aid of a railroad corporation, made by

an act of Congress, is in praesenti, the act passes full legal and equitable title, although the act provides for the issuance of a patent. The patent passes nothing, and is issued merely as evidence of the complete title which was vested when the act became a law. *Deseret Salt Co. v. Tarpey*, 142 U. S., 241. But if no patent had been issued, the discovery of mineral upon the land the next day would oblige the court to say that it did not mean what it said when it adjudged the company to have title to the land; that the company did not have, and had never had, any semblance of title. If a patent had been issued, however, the discovery of mineral could not affect the company. *Barden v. N. P. R. R. Co.*, 154 U. S., 288. The final conclusion is that whenever the granting act provides for the issuance of a patent, the legal title remains in the government until its issuance. *Michigan Lumber Co. v. Rust*, 168 U. S., 589.

An ordinance providing for an assessment upon abutting property to meet the expense of improving a street, which excludes any inquiry as to whether the property assessed is benefited by the improvement, is invalid, and an assessment made under it cannot be enforced. The objection is to the rule prescribed. *Norwood v. Baker*, 172 U. S., 269. But this is only true where a grave injustice has been done the property owner. Such an ordinance is a valid exercise of the legislative discretion, and the rule is unobjectionable, in other cases. *French v. Barber Asphalt Co.*, 181 U. S., 324.

In *Railway Co. v. Ross*, 112 U. S., 377, a very important master and servant decision was rendered. Not long after its rendition, the Supreme Court began to make rulings which seemed inconsistent with it. But it stood as the avowed doctrine of that court until the decision in *Railroad Co. v. Conroy*, 175 U. S., 323, was rendered, when the profession were informed that the *Ross* case was overruled in *Railroad Co. v. Baugh*, 149 U. S., 363.

Lastly, but by no means leastly, in the Income Tax Cases the Supreme Court overthrew a legislative act and a half dozen of its own decisions, rendered during the last hundred years, for (as said by one of the dissenting members of the court) "Reasons of an economic nature;" presumably because one of the appellants' counsel argued that the legislation was "populistic."

When we examine the decisions of the Supreme Court of this State, we find even a greater disregard of its previous decisions.

Under our statutes, an action is commenced by the service of summons or by the filing of the complaint. If the summons is not served before the complaint is filed, it must be served, or its publication commenced, within ninety days thereafter. Now, in a case where the summons is not served before the complaint is filed, and

ninety days elapses without any valid action toward obtaining service, an order quashing an attempted service, made upon a special appearance by the defendant, is appealable as an order "affecting a substantial right in a civil action which in effect determines the action or proceeding and prevents a final judgment therein." *Deming Investment Co. v. Ely*, 21 Wash., 102. But in a case where exactly similar conditions appear, except that a judgment by default has been entered upon the attempted service, an order vacating the judgment because of the insufficiency of the service (and, of course, quashing the ineffectual service), made on motion of the defendant, appearing specially, is not appealable. *Nelson v. Denny*, (Wash.) 67 Pac., 79.

An order sustaining a demurrer to a complaint is not appealable. *Mason County v. Dunbar*, 10 Wash., 163. An order striking allegations from a pleading is. *Snohomish County v. Ruff*, 15 Wash., 637. An order sustaining a demurrer to some of several affirmative defenses is not. *Old National Bank v. O. K. Gold Mining Co.*, 19 Wash., 194. An order denying a motion to strike objections to the confirmation of a sale is. *Krutz v. Batts*, 18 Wash., 460.

An order vacating a judgment is not appealable. *Lumber Co. v. Rucker*, 17 Wash., 600. It is. *Hibbard v. Delanty*, 20 Wash., 539; *Spokane, etc., Co. v. Stanley*, 25 Wash., 653; *Williams v. Breen*, 25 Wash., 666. It is not. *Nelson v. Denny*, (Wash.) 67 Pac., 78.

Certiorari will not lie to review the judgment of a superior court that an appropriation of private property is for a public use, and is necessary, because it can be reviewed on appeal. *Seattle & M. R'y Co. v. State*, 5 Wash., 807. No appeal lies from such a judgment. *Western American Co. v. St. Ann Co.*, 22 Wash., 158. The act of March 16, 1901, confers a right of appeal in such cases. *Parker v. Superior Court*, 25 Wash., 544. It does not, for the act is unconstitutional. *State v. Superior Court* (Wash.), 68 Pac., 957.

In an action where equitable relief is sought, the plaintiff may dismiss the action at any time before judgment, although the defendant has prayed for affirmative relief in his answer. *Waite v. Wingate*, 4 Wash., 324. He may not. *Washington Building Ass'n v. Saunders*, 24 Wash., 321.

The statute which forbids either party to a judgment of divorce to contract marriage with a third person within the time in which an appeal could be taken from the judgment, suspends the judgment and renders it inoperative during that period. Consequently, a marriage attempted to be contracted with a third person during that time is a nullity. *In re Smith*, 4 Wash., 702. But the judgment immediately becomes fully operative, and completely dissolves the marriage relation, if a party to it goes into another state and there

contracts marriage with a third person. Such a marriage is valid. *Willey v. Willey*, 22 Wash., 115.

On the question of the liability of the shareholders in a corporation to its creditors, where property was taken in payment for its capital stock at a greater sum than its actual value, our Supreme Court has maintained two conflicting doctrines, side by side. Starting with the case of *Turner v. Bailey*, 12 Wash., 634, it is held that the shareholder is not liable when nothing more appears than an overvaluation of the property. The overvaluation must be proven to have been intentional and fraudulent. This doctrine is also declared in the *Manhattan Trust Company* cases, 16 Wash., 499, and 19 Wash., 493, and in *Kroenert v. Johnston*, 19 Wash., 96. But it is declared in *Adamant M'fg Co. v. Wallace*, 16 Wash., 614, and *Dunlap v. Rauch*, 24 Wash., 620, that capital stock must be paid for in money or money's worth; that if the property is taken at more than its actual value the shareholders are liable, and the finding of the corporation as to its value is not binding upon the courts. And in the *Manhattan Trust Company* cases, a payment for capital stock in property was held fraudulent as to some creditors, whereby the shareholders were liable to them, and not fraudulent as to others, who had a later hearing. The distinction seems to be that in one proceeding the organizers of the corporation did not testify that they acted in good faith, while they did so testify in the other proceeding.

Another instance of vacillation is found in the line of cases originating in *Sears v. Williams*, 9 Wash., 428. It was originally held that where one contracted to do certain work, and gave a bond to the other contracting party, undertaking to pay the laborers employed upon the work, these laborers, not being parties to the bond, could maintain no action upon it. This doctrine seems to be practically sustained, though without mention of the case declaring it, in *State v. Cheetham*, 17 Wash., 131; is practically overruled in *State v. Liebes*, 19 Wash., 589; and is finally destroyed (until its reincarnation) in *McDonald v. Davey*, 22 Wash., 366.

All will agree, beyond question, that such incertitude of decision, such vacillation in principle, is derogatory to the true interests of the community. So long as it prevails, no one can be certain as to his rights. A decision is rendered in which a certain principle is announced. Relying upon this being the law, a person shapes his conduct, only to find, when his rights come in litigation, that the principle upon the faith of which he dealt has been superseded by a wholly different one. The lawyer has not so easy a task to say what the law is, that it need be complicated by conflicting decisions of the court whose declarations are controlling.

What is the cause of this evil? For when the cause is found the remedy may be suggested. It is not, I think, hard to discover. Such expressions as these are frequently found in the opinions of appellate courts: " * * erroneous instructions are not a cause for reversal where the verdict is right" (*Miller v. Palmer* (Ind.), 58 N. E. Rep., 213), " * * being satisfied that no other verdict than that which was rendered could have been properly rendered, we would not reverse the judgment below for error in the giving of instructions" (*Waggoner v. Wabash R. Co.* (Ill.), 56 N. E. Rep., 1050); "That the remarks of the prosecuting attorney in addressing the jury were beyond the bounds of legitimate argument, and should not have been permitted, is without question; and if the case were a close one, or there was any doubt in our minds as to defendant's guilt, we should not hesitate to reverse the judgment upon that ground alone, but, as defendant's guilt was conclusively shown, we must decline to do so." (*State v. Phillips* (Mo.), 60 S. W. Rep., 1050); "The court below should have interposed and stopped the intemperate speech. But we are not satisfied that any substantial injury was done the defendant. The amount of the verdict is not large, when we consider the aggravated circumstances under which the plaintiff was ejected; and we are not, therefore, inclined to reverse the case because of these intemperate and ill-chosen remarks of counsel. (*Chamberlain v. L. S. & M. S. R'y Co.* (Mich.), 81 N. W. Rep., 339); "The ultimate fact for us to determine is, whether the jury arrived at a correct conclusion. And we think they did, and that complete justice has been done in this case. There is no conflict in the testimony on the material question in issue. And the verdict is unmistakably in accordance with the evidence and consonant with justice, and ought not, therefore, to be set aside and the judgment rendered reversed on account of erroneous instructions by the court." (*Carroll v. Centralia Water Co.*, 5 Wash., 613). These utterances can mean but one thing: that a sentiment has grown up among the judges of the courts of final resort, that it is their duty to ascertain where lies the right of each cause coming before them, and when that point is determined to their satisfaction, that they should render such judgment as of right ought to be rendered, regardless of any other feature of the case.

This sentiment sounds extremely well. Courts are created to do justice between litigants, and when they do this without regard to aught but the right of the cause, an ideal result appears to be attained. But several very good reasons why courts of last resort should not decide causes solely as they consider the merits of the controversies require, will readily suggest themselves to the mind of the practical man, whether he be lawyer or layman.

The first reason that suggests itself is that no court has the right to decide causes cognizable by a jury upon such a theory. The law prescribes the manner in which a cause shall be submitted to the jury for its consideration. The office of the courts, trial or appellate, is merely to enforce a proper submission. This done, the jury, and the jury alone, must say where lies the right. When a court says that a cause was not properly submitted to the jury, but that that fact will be ignored because it considers that the jury reached a proper conclusion, it is usurping the functions of the jury. How is the court to say what the verdict would have been had the cause been properly submitted? How may the court say that the improper argument, the erroneous instruction, did not affect the jury, save by the process of comparison expressed in: "It would not have affected us, therefore it did not affect you." Of what avail is it that the law prescribes that counsel in their argument must confine themselves to the record, and that the trial judge in instructing the jury must correctly state the law, if the appellate court is at liberty to disregard those injunctions when the jury's verdict accords with its ideas? If it is permissible for a court to affirm a judgment, though error was committed in the submission of the cause, because it considers the verdict right, it is permissible to reverse a judgment, though no error was committed, because the verdict seems improper. The one proposition is a converse of the other. In either case, the criterion by which the propriety of the judgment is to be determined is its coincidence with the views of the appellate court.

I would not be understood to urge that a failure to observe some formality, or a disregard of some technicality, should constitute reversible error. Minor errors may occur in a cause which it is perfectly obvious could have occasioned no injury. The true rule in such cases should be that stated by Mr. Justice Miller in *Deery v. Cray*, 5 Wall., 795:

"We concede that it is a sound principle that no judgment should be reversed in a court of error when the error complained of works no injury to the party against whom the ruling was made. But whenever the application of this rule is sought, it must appear so clear as to be beyond doubt that the error did not and could not have prejudiced the party's rights."

The observance of this rule would insure to litigants the judgment of the jury as to the justice of their cause, not merely that of an appellate court; a result which is not attained while the courts adhere to the rule they seem of late to have adopted.

A second reason is that an appellate court is the least qualified of all the tribunals which may have to do with a cause to determine

what its merits are. The merits of a cause, the good or bad faith of the parties, the truth or falsity of the testimony, cannot be so well understood by such a court as they were by the trial judge, referee, or jury, who tried the cause. And particularly is this true under such a slovenly system for bringing the evidence into the record as we have in this state, where no attempt is or can be made to weed the immaterial from the material, but everything the stenographer has heard and transcribed during the trial, including, in most cases, a quantity of vile English which must have originated in his own mind, is sent to the appellate court in order that the judge who writes the opinion (it is impossible that all the judges should wade through the mass), may separate the meaning from the meaningless. When appellate judges attain omniscience, litigants may desire that they shall decide, unhampered by rules of law or anything else, who, of right, ought to succeed. Until that time it would be well that they should regard the limitations which the law (to say nothing of poor human nature) has placed upon them, and not attempt omnipotence.

While man is governed in his dealings with his neighbor by selfish interests, which will be while man is man, he will concede what the law demands of him, and no more. Consequently, if he would deal with safety he must know what the law permits and what it withholds. If the law is definite and certain, this may be easily known. Commerce will be stimulated, for the dealings are under ascertained rules, and disputes lessened, for no one is foolish enough to demand that to which he is clearly not entitled. Is it wise to unsettle fixed legal principles, to set the community adrift upon a sea of doubt, disturbing and embarrassing the trade of the country and producing a prolific crop of quarrels and litigation, merely that the real or imagined hardship of applying a principle of law to some particular case may be averted? The question is fitly answered in the words of Mr. Justice Cowen in *Bates v. Relyea*, 23 Wend., 336:

"The decisions of this court, while unreversed, always formed the absolute law of the case, and entered with very decisive effect into the body of precedents. They must, from the nature of our legal system, be the same to the science of law, as a convincing series of experiments is to any other branch of inductive philosophy. They are, on being promulgated, immediately relied upon according to their character, either as confirming an old or forming a new principle of action, which perhaps is at once applied to thousands of cases. These are continually multiplying throughout the whole extent of our jurisdiction. Numerous and valuable rights, offensive and defensive, may be claimed under them; and I have no doubt this remark is peculiarly true of the decision in *Clark v. Luce*. * * * ."

"Independent of this statute, Sir William Jones has written an excellent commentary on the maxim *stare decisis*, etc., by way of a reply to a remark of Powell, J., who said 'nothing is law that is not reason.' This is a maxim says Jones, 'in theory excellent, but in practice dangerous, as many rules, true in the abstract, are false in the concrete; for, since the reason of Titus may, and frequently does, differ from the reasons of Septimius, no man who is not a lawyer, would ever know how to act, and no man who is a lawyer, would in many instances know how to advise, unless courts were bound by authority as firmly as the pagan deities were supposed to be bound by the decrees of fate.'"

Thus have thought the greatest minds of centuries of our jurisprudence, and it is at least doubtful whether there has been so great an access of wisdom for this present day as to justify the declaration that those minds gravely erred.

If, however, a new rule is to be adopted, if our courts of last resort are to decide each case coming before them as they fancy abstract justice requires, they will confer a boon upon the community, and particularly upon the legal profession—thus realizing the proverb that it is an ill wind which blows no one good—if they will but announce, unqualifiedly, that that is their rule of decision, and abandon the pretence of respect to precedent and authority. This will advise the community, lawyer and litigant, that causes are to be tried to the appellate courts as to juries, save that in this last trial there are no fixed rules to circumscribe the bounds of the hearing. It will solve for the lawyer the vexed question of the hour: how to keep advised as to current decisions, and yet avoid bankruptcy. For what will the lawyer care for reported cases, when the courts not only do not, but avowedly do not, pay any attention to precedent? Lastly, but probably not leastly, the problem over which various "Taxpayers' Leagues" throughout the state have been worrying themselves, viz., the reduction of the cost of our courts, will be solved. As causes are to be decided by no rule, but only on principles of abstract right, there is no necessity for the intervention of a specially educated and trained profession, and the layman should be made as eligible to the judicial position as the lawyer. Neither would there be any need for our present system of trial judges, juries, and appellate courts. Some officer to transcribe everything which either party thinks will demonstrate the merit of his cause (for why preserve rules of evidence when all else fails?), and certify it to a tribunal which will determine who is the oppressed and who the oppressor, and we have adequate machinery provided for the administration of the new system of justice. If established principles are to

be overthrown and restored at pleasure, to suit the passing fancy of the judge, abrogate all principles, once and for all time. With the evils which attend upon such a course, let us have such admixture of good as will result from an open avowal that the reign of principle and precept is destroyed forever.

RAILWAY AND TRANSPORTATION COMMISSIONS.

By Arthur Remington, Tacoma.

It is quite beyond the limits of this paper to go into the details of the various commission acts throughout the United States, much less to give the history of the various commissions or the details of the work accomplished. There has been much unwise legislation on the subject, notably the hopelessly ambiguous law of Oregon, and the Kansas experiment, creating a so-called Court of Visitation. There have been other failures, principally in the south, and the courts have not been slow to point them out.

The study of the good and the bad is alike instructive, but we can not be particularly interested in the failures that have fallen by the wayside. Some of the states early became discouraged and gave up entirely; others persevered and corrected the errors at first committed. When we speak of railway or transportation commissions, we refer to those that have been sustained by the courts and that are performing their functions to-day, not to the abandoned methods that have been tried and found wanting.

But this subject is so broad that the details of even the successful commission acts must be left to those who have more time to give to the matter. In this paper I shall simply attempt to cover a few of the general principles, which appeal to us as lawyers, and which the decisions of the courts have made the most prominent. And while I have nothing whatever to say as to the political expediency of a law on the subject in this state, and at this time, I shall not hesitate to draw such general conclusions as appear to me to be warranted by the adjudicated cases, and the history which they reveal.

ORIGIN AND SOURCE OF POWER.

Railway and transportation commissions are simply a part of the machinery for the administration and execution of certain police powers of the state. Laws upon this subject are mere regulations

of the police power and they now very commonly take the place of previous regulation by maximum rate laws. To intelligently discuss the subject of railway commissions we must give attention to the nature of the police powers which such commissions are designed to regulate and administer, and to the previous regulation thereof by means of maximum rate laws.

The police powers embrace not only the preservation of (1.) public health, (2.) public morals, (3.) civil rights, and (4.) the general welfare, but also (5.) the regulation of business enterprises, the foregoing being the five principal subjects of its exercise. During the recent years of unparalleled business activity, the regulation of business enterprises has demanded ever increasing attention from the police powers; this is especially true in the United States, where private capital is so largely invested in quasi public institutions, and so intimately affected with public interests and public duties.

In this country this sovereign power belongs to the several states and not to the Federal government, except as reserved by the constitution. By far the greater portion of the police powers, including, of course, the regulation of domestic (meaning state or local) commerce is vested exclusively in the several states, and is administered, if at all, by and under the direction of the state legislatures.

The Federal constitution reserves to Congress the regulation of interstate commerce, and thus a portion of railway regulation in this country devolves upon the Federal legislature and vests an important part for the police powers in the Federal government.

Interstate commerce, as held in *Wabash, St. L. & Pac. R. R. Co. v. Illinois*, 118 U. S., 557, includes a transportation of goods under one contract and by one voyage from any point in the state to a point outside the state, and, in such case, even that part of the transportation which is wholly within the state is exclusively within the control of Congress. But the United States Supreme Court in that case limits the authority of the state over these police powers only by the commerce clause of the Federal constitution.

In considering this subject and the state and Federal cases in point, it is well, also, to note that this state and Federal control are identical within their respective jurisdictions. Whatever the Federal government may do as respects interstate commerce, the state can do as respects local commerce, and vice versa. In *Kentucky and Indiana Bridge Co. v. Louisville and Nashville Railway Co.*, 2 L. R. A., 289, Chief Justice Jackson, of the United States Circuit Court, speaking of the interstate commerce commission, says:

"This Federal commission has assigned to it the duties and performs for the United States in respect to that interstate commerce,

committed by the constitution to the exclusive care and jurisdiction of Congress, the same function which state commissions exercise in respect to local or purely internal commerce over which the states appointing them have the exclusive control."

There is some confusion in ideas as to the source and origin of this important sovereign power, as well as to its limits and attributes.

As said by Chief Justice Shaw in *Commonwealth v. Alger*, 7 Cush., 85, "It is much easier to perceive and realize the existence and sources of this power, than to mark the boundaries, or prescribe the limit of its exercise." The source and origin of the power discloses the reasonableness, nay, the necessity, for providing for its administration and execution, either by means of railway commissions or by some other effective legislation. The boundaries or limits of its exercise will serve to indicate the proper provisions to be included in legislation on the subject.

Originally the right to devote to the public use any private property emanated from the sovereign as a privilege or franchise granted, and therefore was necessarily subject to such regulations and restrictions as the sovereign power saw fit to impose. The right to maintain a ferry or toll road, to hold a fair or market, to conduct the business of a miller, or a common carrier or wharfinger was originally the subject of royal grant, and it has always been customary to regulate the charges for the public use of any private property or for the owner's services rendered in connection with the accommodations furnished or sold to the public.

The controlling fact is the power to regulate, not that regulations were exacted by charter. It has been assumed that the power to regulate depended upon the charter or grant, but although the regulations were prescribed by charter and to that extent depended upon it, the right to regulate did not depend upon the charter or grant; on the contrary, it depended upon the police power, inherent in the sovereign, irrespective of the grant itself. This is proven by those early English cases where the King's grant over-stepped the limitations of the police power. The common law required the toll or charge to be reasonable, and this in itself is a regulation of the price, invoked by the police power for the benefit of the public. And where the royal grant or prerogative disregarded this restriction and authorized an unreasonable charge, it was invariably held to be void.

In the same line of thought are the numerous American cases repudiating the doctrine that provisions in the charter of a company could act as limitations upon the regulation of business. No franchise granted to a railway or transportation company can in any degree control these police powers of the state.

In *Boyd v. Alabama*, 94 U. S., 645, it is said "We are not prepared to admit that it is competent for one legislature, by any contract with an individual, to restrain the power of a subsequent legislature to legislate for the public welfare, and to that end to suppress any and all practices tending to corrupt the public morals."

In *Stone v. Mississippi*, 101 U. S., 814, it is said: "All agree that the legislature can not bargain away the public power of the state," and it was ruled that the police regulations must be given effect, as against a conflicting provision in the charter, on the ground that no part of the police power can be parted with by contract; all of which goes to show quite conclusively that the power to regulate business enterprises is entirely independent of the charter or franchises granted by the sovereign power to the corporation.

I assert without hesitation that no charter provisions of any of our railroads will ever hamper us in the slightest degree in the making of any needful regulations under this police power of the state. In this connection, it may be noted, also, that the Supreme Court of the United States has frequently held that the charters granted by Congress to the transcontinental railroads do not prevent the states from prescribing rates and other regulations to apply between all local points. These cases are reviewed in *Smith v. Ames*, 169 U. S., 417. And in that case it was held that the provision in the Union Pacific charter giving congress the power to fix or limit the rates, did not preclude the state, in the absence of regulations by congress, from prescribing regulations for transportation beginning and ending in the state.

The leading case in this country is *Munn v. Ill.*, 94 U. S., 113, the first of the famous Granger Cases. In the opinion in that case, Chief Justice Waite says: "Looking then, to the common law, from whence comes the right which the Constitution protects, we find that when private property is 'affected with a public interest, it ceases to be *juris privati* only.' This was said by Lord Chief Justice Hale more than 200 years ago in his treatise *De Portibus Maris*, 1 Harg. Law Tracts, 78, and has been accepted without objection as the essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest which he has thus created. * * *."

"From this source come the police powers, which, as said by Chief Justice Taney in the License cases, 5 How., 583, 'Are nothing more or

less than the powers of government inherent in every sovereign, * * * that is to say, * * * the power to govern men and things.' Under these powers the government regulates the conduct of its citizens, one toward another, and the manner in which each shall use his own property when such regulation becomes necessary for the public good. In their exercise it has been customary in England from time immemorial, and in this country from its colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished and articles sold."

The courts have uniformly traced the power of the state to pass laws of this nature to the police power. Chief Justice Waite says in *Munn v. Illinois*: "From the same source comes the power to regulate the charges of common carriers, which was done in England as long ago as the third year of the reign of William and Mary, and continued until within a comparatively recent period. And in the first statute we find the following suggestive preamble, to-wit: 'And, whereas, divers wagoners and other carriers, by combination amongst themselves, have raised the price of carriage of goods in many places to excessive rates, to the great injury of the trade, be it therefore enacted,' etc.

But it is certainly unnecessary to go further. Enough has been said to show the nature of the right of the state to make those regulations, which under the modern trend of legislation have been delegated to railway or transportation commissions. From the earliest times the imperative necessity for such regulations have been recognized and by the organic law of this state the legislature is commanded "to pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight, and to correct abuses and prevent discrimination and extortion in the rates of freight and passenger traffic on the different railroads and other common carriers in the state, and shall enforce such laws by adequate penalties." And it is added: "A railway and transportation commission may be established, and its powers and duties fully defined by law."

Wash. Const., Art. 12, Sec. 18.

The only regulations known to English jurisprudence are the maximum rate laws and the commission acts. Until something better has been devised, it is a choice between one or the other, and a comparison is necessary to understand the merits or defects of either.

MAXIMUM RATE LAWS.

Originally it was sought, by means of fines and penalties, to be

recovered in criminal prosecutions, to compel public servants to demand and receive only reasonable compensation for their services, and this was done by fixing a maximum amount, beyond which it was unlawful to go. We can readily see how such regulations, properly made, afford some measure of relief. If there was no other question but the reasonableness of the rates asked by the railroad companies, a maximum rate law, properly fixed, and as long as conditions remained stationary, would provide all the regulation required.

The legislative maximum rate laws and the commission acts both aim to prescribe a tariff of rates for the transportation of all commodities, on all railway lines in the state, and between all stations in the state. The policy by which regulation is accomplished is the same, and there is simply a difference in the method of determining the tariff. By the old plan the legislature endeavored to prescribe the rates for itself. By the regulative commission system this duty is delegated to a board.

A volume would be necessary to review the various experiments in maximum rate laws in this country, but the principle of all of them is practically the same,—an effort to determine by an unwieldy legislative body the prices to be charged, with penalties for violation to be collected either in the criminal or civil courts.

I will only briefly notice our own law upon the subject. By Section 4313, I Bal. Code, the legislature adopted a maximum rate of \$4.25 per ton, for 350 miles or over, and also adopted 90 per cent. of the rate actually in effect on the Northern Pacific Railroad between any points in the State of Washington, on January 2nd, 1897, for any distance within the state. Now a maximum rate law may be so worded as to be entirely a misnomer, and whether it works to the advantage of the public sought to be protected or is for the benefit of the common carrier supposed to be regulated, may be made to depend entirely upon the amount of the charges fixed. Our own maximum rate law furnishes the most striking example of such a misnomer, for by an apparently innocent provision the schedule of prices fixed is turned into a minimum instead of a maximum rate.

Section 4326 is as follows:

"In all actions between private parties and railroad companies or other common carriers doing business in this state, brought under this article, the rates prescribed and fixed by this article shall be held conclusive and deemed and accepted to be fair, reasonable and just, and in such respects shall not be controverted therein, until finally found otherwise in a direct action brought for that purpose in the manner in this article hereinafter prescribed and fixed."

By Section 4325 an action is provided for shippers when the carrier

charges a larger sum than the rates established, but strange and incredible as it may seem, no provision whatever is made whereby any citizen of this state can bring an action to have these rates reduced in case they are or shall subsequently become unreasonably high. Elaborate provisions are made whereby, at the suit of the railway company, these prices may be increased, if found to be unreasonably low, but there is no way to reduce them. Neither the citizen or the state is provided with any possible means of redress except where the company demands a higher rate than the prices fixed, as based upon the Northern Pacific Schedule of January 2nd, 1897. Thus, if the state, or any aggrieved party, seeks any redress in the courts, from any unreasonable rates, or extortion, authorized by this law, instead of confronting the common carrier with a maximum schedule beyond which it is unlawful to go, the complainant himself is confronted with this legislative dictum, that 90 per cent. of the rate voluntarily fixed by the company five years ago, is "fair, reasonable and just," and by the terms of the statute is made conclusive upon the litigants. This law, therefore, is in both theory and practice, actually a minimum rate law, instead of a maximum rate law.

We must bear in mind that the sole object of this law, as well as the object of all railway commission laws, is to enforce the police powers of this state by a regulation of common carriers. I venture the assertion without fear of successful refutation, that in the entire history of railway legislation of this character, since the first enactment in the reign of William and Mary, down to the present time, no more ineffectual law for the "regulation" of the public business of a common carrier has ever been enacted.

The very next section of this article (4327) covering nearly three pages of Ballinger's Code, furnishes all the argument necessary to show the impracticability of a legislature's attempting to fix, the rates of a transcontinental railroad. The details of the procedure by which reasonable rates might be ascertained by a court are pointed out, and provided for, such as the ascertainment from the books of the company of the capital stock and the value of the investment in the railroad, its costs and present condition of construction and equipment, the extent and nature of its debts, its gross and net earnings for ten years last past, the salary of its employees, the amount of its government aid, its terminal facilities, and connections, its tonnage of merchandise, for the last five years, and the relation of its lines in this state to the entire line, the nature of its engineering difficulties, its grades, and such figures from its books and vouchers and from official reports and statistical works as can and should be taken into account. But this procedure and all this evidence is

provided for only in a suit brought by the company for the purpose of increasing rates, and it cannot be made available to secure a reduction, or any other "regulation." It is of no benefit to the state or its citizens in case the 90 per cent. of the rates voluntarily adopted by the company five years ago are unreasonably high.

As said by the Georgia Supreme Court, commenting upon constitutional provisions very similar to ours:

"It certainly was not contemplated that the details of rates to be fixed over the many miles of railway in the state should be settled and determined by the legislature. The many influences that combine to cause changes in the ever varying vicissitudes of trade and travel were neither overlooked nor forgotten by that body. The utter impossibility of preparing, by the legislature, just and proper schedules for the various railroads, with their differences of length, locality, and business, appears to us to be so clear and manifest as that to have entertained it would have been absolutely absurd. And especially so, when it is remembered that schedules, just and right when arranged for the months of winter, might be ruinously unjust and wrong for the months of summer; or that such as were proper for the year of the meeting of the General Assembly might the succeeding year well nigh bankrupt every railroad corporation in the state."

Georgia Railway Co. v. Smith, 70 Ga., 694.

As said in another case:

"The question, 'What are just and reasonable rates?' is one which presents different phases from month to month, upon every road in the state, and in reference to all the innumerable articles and products that are the subject of transportation. This question can only be satisfactorily solved by a Board which is in perpetual session, and whose time is largely given to the consideration of the subject. It is obvious that to require the duty of prescribing rates for the railroads of the state, to be performed by the General Assembly, consisting of a Senate, with forty-four men, and a House of Representatives with one hundred and seventy-five, and which meets in regular session only once in two years, and then only for a period of forty days, would result in the most ill-advised and haphazard schedules, and be productive of the greatest inconvenience and injustice, in some cases to the railroad companies, and in others to the people of the state. It is impracticable for such a body to prescribe just and reasonable rates. To insist that this duty must be performed by the General Assembly itself is to defeat the purpose of that clause of the Constitution under consideration."

Tilley v. Savannah Railway Commissioners, 4 Woods, 427.

Justice Brewer in Chicago N. W. R. Co. vs. Dey, 35 Fed., Rep.,

366; 1 L. R. A., 744. in delivering the opinion of the United States Circuit Court of the Eastern District of Iowa, says:

"The reasonableness of a rate changes with the changed condition of circumstances. That which would be fair and reasonable today, six months or a year hence may be too high or too low. The legislature convenes only at stated periods, in this state once in two years. Justice will be more likely done if this power of fixing rates is vested in a body of continual session than if left with one meeting only at stated and long intervals. Such a power can change rates at any time, and thus meet the changing conditions of circumstances. While, of course, the argument from inconvenience cannot be pushed too far, yet it is certainly a matter of inquiry whether in the increasing complexity of our civilization, our social and business relations, the power of the Legislature to give increased extent to administrative functions must not be recognized."

Long before the days of railways, it might have been possible, in a small country like England, for Parliament to make sufficient regulations from time to time to suppress the principal evils of the times. However, that primitive stage of commerce furnishes no parallel to present times, and the only wonder is that the original scheme of legislative maximum rates answered the purpose for so long a time. But even in England it was found impracticable fifty years ago. After many experiments and many improvements upon the first maximum rate laws, a commission act was passed in England in 1854 and, as amended in 1873, authorized the commissioners to fix charges and gave them greater powers than are conferred upon our interstate commerce commission. In 1887 the interstate commerce act, was passed by congress creating the interstate commerce commission, and previous to that time railway and transportation commissions had been created in many of the states.

It is true many of the states adhere to the ancient maximum rate law, to be enforced by fines and penalties, and the epidemic, as we might term it, of maximum rate laws in this country, long after the English Parliament had turned the subject over to a commission, can, in my opinion, be traced to a dictum in the *Munn* case, which has since been overruled. At first it was understood that a rate or charge fixed by the legislature was absolute—that the reasonableness of the rate was a legislative, not a judicial question, and that after the legislature exercised its discretion, as to what was a reasonable rate, the courts had no power to interfere. It was so directly ruled in *Munn vs. Ill.*, by the United States Supreme Court, in 1876, whereas rates fixed by a commission are only *prima facie* evidence of their reasonableness, and were subject to review by the courts.

Consequently legislators saw a distinct gain in fixing the rate by legislative act, instead of delegating it to a commission, and it was thought thereby to avoid litigation. At first this rule was generally followed and applied, but in this one particular, *Munn vs. Ill.*, has been expressly overruled, and it is no longer law, the writer of the opinion in that case being in fact the first to point out the error. This was done in *Stone vs. Farmers' L. & T. Co.*, 116 U. S., 331 (29 L. 644), where Chief Justice Waite says: "It is not to be inferred that this power of limitation or regulation by a legislature is itself without limit. This power to regulate is not a power to destroy and limitation is not the equivalent of confiscation. Under pretense of regulating fares and freights, the state cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to taking private property for public use without just compensation or without due process of law."

For some time, however, this correction remained unnoticed and many of the state courts still followed *Munn vs. Ill.*, while others acted upon the suggestions of the *Stone* case, and for a time there was considerable conflict in the authorities. It was not until 1890 in the case of *Chicago, etc., Railroad Co. v. Minn.*, 134 U. S., 461, that the United States Supreme Court was called upon to overrule the *Munn* case upon this point, and several of the Justices dissented because it did not overrule the dictum in that case. The proposition there laid down by Blatchford that the reasonableness of rates established was a judicial question, is now the settled rule, and this is true whether the rate is fixed by legislative act or by a delegated commission.

Interstate Commerce Comm. vs. Ry. Co., 167 U. S., 500.

Reagan vs. Farmers' L. & T. Co., 154 U. S., 397.

Cleveland Gas Light Co. vs. Cleveland, 71 Fed., 613.

So. Pac. Co. vs. Board, 78 Fed., 236.

The rates may be fixed by the Legislature, but still those rates must be reasonable. The rate must permit the running of the railroad at a profit, or it amounts to the taking of private property without due process of law. This profit is to be determined by the payment of all fixed charges and a fair rate of interest on the investment.

The legislature, in short, can do no more than a properly delegated commission could do, in the way of fixing rates. This annuls one of the arguments in favor of maximum rate laws commonly advanced prior to the year 1890, and when our state constitution was adopted. Ever since it was finally settled that Legislative maximum rates must be reasonable and are subject to be reviewed by the courts, the courts have been busy pointing out the tests of reasonableness,

and the facts and conditions to be considered and the extremely complicated nature of the inquiry has been more and more apparent.

The practical result of these decisions has been to discredit Legislative maximum rate laws, for it is clear that they can not have been established upon any proper consideration of the subject. The litigation over legislative maximum rates has certainly been far greater than that over the commission acts, and would probably continue so.

The case of *Smith vs. Ames*, 169 U. S., 464, is very much in point. The Nebraska Commission Bill was combined with a law establishing legislative maximum rates—that is, the legislature prescribed a tariff beyond which no charges could be made, giving the Railway Commission regulative power to decrease or lower the rates. The Supreme Court of the United States, without questioning any of the other provisions of the commission act, held that the rates prescribed by the legislature were confiscatory and violated the 14th amendment of the Federal Constitution. The same ruling was made upon the Texas law, in *Reagan vs. Farmers' Loan & Trust Co.*, 154 U. S., 362. The maximum rates prescribed were held to be void, as unreasonably low, but it was decided that this did not affect the validity of the other provisions authorizing the railroad commission to fix reasonable rates, and that the commission could not be enjoined from proceeding to fix reasonable rates.

In England for the last fifty years, and at home, in both national and state affairs, it has long since been recognized that it is impracticable for the legislature to fix the charges of a common carrier and this is only one of the various duties of the state in the enforcement of the police power, in respect to the regulation of railway business.

But that is not all. It has been determined by the United States Supreme Court that in prescribing local rates, only receipts and expenses, and the property employed in handling the local business can be taken into account; interstate business and the property employed in interstate commerce can not be considered, and this further seriously complicates the inquiry.

If anyone thinks it practicable for a legislative body to determine for itself the reasonableness of a railroad tariff of freight rates, he should read the Reports of the Industrial Commission, or a few of the cases where the reasonableness of the rates was a question in issue, and in which the Supreme Court of the United States has ruled what facts and conditions must be taken into consideration and duly weighed.

In the trial of *Smyth v. Ames*, in the lower court, Justice Brewer, as Circuit Justice, undertook the work of examining the testimony, making computations and finding the facts, and this he tells us in

Chicago, Mil. & St. P. v. Tompkins, 176 U. S., 180, was very laborious and took several weeks. We are not informed how many weeks were consumed in trying the case or in preparing the evidence. In the latter case he remarks: "Few cases are more difficult or perplexing than those which involve an inquiry whether the rates prescribed by a state legislature for the carriage of passengers and freight are unreasonable. And yet this difficulty affords no excuse for a failure to examine and solve the questions involved."

In that case the rule was laid down that the reasonableness of a schedule of local rates must be determined by a comparison between gross receipts and the cost of doing business, taking into account the value of the property employed in local business, entirely irrespective of gross receipts and expenses in its interstate business. In that case the computations of the lower court were after great difficulty found incorrect, and the case was referred back to a master to make the needed computations, and Justice Brewer remarks:

"It is hardly necessary to observe that in view of the difficulties and importance of such a case it is imperative that the most competent and reliable master, general or special, should be selected, for it is not a light matter to interfere with the legislation of a state in respect to the prescribing of rates, nor a light matter to permit such legislation to wreck large property interests."

The Report of the Industrial Commission upon this subject, reviewing the objections to conferring a rate-making power upon the Interstate Commerce Commission, says:

"No denial whatever of the arbitrary and enormous power which the right to make freight rates imposes can be entertained for a moment. A pertinent question, however, is as to whether the exercise of such power by irresponsible railroad managers, as at present, is any more reasonable. If, according to the statement of the railroad interests themselves, the power to make freight rates involves the right to make or break men, industries, and even the prosperity of entire States, how great is the necessity for adequate supervision, subject to appeal to the courts?"

"This is apparently recognized by the more conservative representatives of the carriers themselves, as evidenced by testimony before the Industrial Commission. Under the circumstances at present prevalent this arbitrary power is exercised by one party, namely, the traffic managers of the railroads in interest, without any appeal whatever. If the powers of the Interstate Commerce Commission were to be rehabilitated by amendment of the act, it would simply mean that the public interests and those of the shippers would be entitled to representation in originally fixing the rates, leaving

thereafter the final decision in contested cases for judicial determination."

And the final conclusion of the commission is:

"Some effective remedy for the intolerable conditions which prevail under the law to-day must certainly be provided."

Report of the Industrial Commission, Vol. 19, pp. 429-432.

It is now universally conceded that in fixing rates, it is absolutely necessary to take into consideration what is known as commercial necessity. The Industrial Commissioner's final report divides water competition into four classes: canal, river, lake, or ocean. Vol. 19, p. 433. Railroad competition is divided into four distinct types: (1st) direct competition of parallel lines, (2nd) indirect competition of widely separated routes, (3rd) the competition between cities, and (4th) between markets. (p. 355.) The situation is further complicated by the highly technical subject of freight classifications, commodity rates, car load rates, transcontinental rates, rates made to meet special import and export conditions, besides all the vexed questions in connection with the long and short haul provisions, and the so-called basing-point system, and the perplexities of discriminations and differentials that are always arising from rare and peculiar circumstances. All of which must be duly taken into account in prescribing a tariff of rates.

See report of the Industrial Commission, Vol. 19, pages 349-396. At page 359 the Commission says:

"So profoundly modified are all the conditions of railroad competition, in contrast with those in industry, that it has frequently been asserted that a railroad is essentially a monopoly in any case. So far as local business as distinct from through traffic is concerned, this is undoubtedly true. It is also true in respect of traffic in which competition is direct enough to permit of pooling or a division of the business upon satisfactory terms. Every tendency towards consolidation, and especially the recent movement, taking the form of division of the field, undoubtedly adds force to this contention that railroad charges are essentially monopolistic in character. To attempt to perpetuate competition, however, in an industry in which, as has been almost universally recognized, equal competition is the exception and not the rule, must be the part of folly. The only alternative is to recognize the conditions as they exist. If the railroad business is a monopoly, its charges being determined in accordance with the principles that apply to that form of industrial organization, the necessity for adequate supervision and control in the public interest becomes all the more patent."

"Such control, should, however, recognize the fact that the conditions are highly complex, and that no simple and general rules can

be made to govern in all instances. The very complexity of the problem emphasizes the necessity for intelligent direction. To foster salutary competition between trade centers, for instance, and to eliminate at the same time the grasping desire of unqualified competitors to participate in business which properly belongs to others, should be one of the ends contemplated by such control. Nevertheless it should be recognized that the interrelation of roads by all possible routes between producing and consuming centers is so delicately adjusted that to interfere with one road is always liable to disturb the balance of power throughout the whole. The delicacy of the rate adjustment which has resulted from years of conflict, discussion, and compromise between the railroads constitutes one of the strongest reasons for supervision by some competent authority. Abuses or maladjustments of rates, which the railroads can not remedy themselves, make supervision by some disinterested party all the more necessary."

TWO TYPES OF COMMISSION ACTS.

There are two distinct types of railway commission acts, one merely advisory, the other regulative. Most of the earlier acts, were of the former type; the commission had no power to prescribe rates or to enforce its regulations. The Massachusetts Act is of this nature, and the Interstate Commerce Commission is similar.

Regulative commission acts usually delegate to the board the power to prescribe rates which are compulsory upon the railroads, until set aside by the courts. The present Minnesota and Texas statutes are of this character, and probably as successful in their operation as any to be found. The English act also delegates to the commission the power to prescribe rates, and belongs to this class. A brief comparison of the Massachusetts and Minnesota acts will answer all our purposes.

The Massachusetts State Board of Railway Commissioners was founded in 1869. It is made up of three members, one familiar with trade and commercial interests, one familiar with railroad operations and construction, and one lawyer. It has a few mandatory powers, having absolute control over questions concerning safety to both the public and employees, including grade crossings; it also fixes the price of newly issued capital stock, determines upon the building of new lines, and a few similar powers of minor importance.

As to the fixing of rates, it has only advisory powers. If its recommendations are disregarded an appeal must be taken to the Legislature. According to the testimony of Mr. Jackson, a member of the board, given before the Industrial Commission, in May, 1901, while it has no power to fix rates, it exercises a very material control over them.

In passing upon rates, the Commission makes an investigation and a report, and in most instances their recommendations have been adopted by the railroads. Mr. Jackson instances the adoption of their recommendation that 500 mile tickets be sold at two cents per mile, also one instance where the Commission refused to recommend a 50 trip ticket in Boston suburban fares, in place of a 12 trip ticket, and upon appeal to the legislature a 25 trip ticket law was passed. He states, however, that there are but very few appeals, and in most appeals the Commission is sustained.

See Industrial Commission Reports, Vol. 9, pages 841-8.

As against this, however, we have the overwhelming evidence of the experts who testified to the inefficiency of the Interstate Commerce Commission, a board with very similar authority. No one can read Mr. Jackson's testimony in favor of an advisory board, without being impressed with the fact that the questions submitted to that board were of very minor importance, having little relation to the great problems of commercial regulation, which confront us in Western States today.

The testimony respecting the Interstate Commerce Commission is very instructive. See Vol. 9, Industrial Commission Reports, pp. 6, 76, 372, 473, 464, 877-82.

In the final report of the Industrial Commission, Vol. 19, page 426, the exact status of the Interstate Commerce Commission and the objections to an advisory board are fully and very clearly set forth.

Upon the organization of the Commission it at once assumed power, not only to investigate, but to also prescribe and enforce the remedy. The carrier made the rates in the first instance and the board corrected them. The cases finally led up to the rule some ten years later, that the Interstate Commerce Commission, under the law of 1887, has no power to prescribe a rate for the future, although it has power to pass upon the reasonableness or unreasonableness of a rate already paid.

Interstate Commerce Com. v. Railway, 167 U. S., 479.

The Industrial Commission; says, p. 427:

"Not even the right to prescribe maximum rates would seem to have remained to the commission after this interpretation. The only action open to it would be to declare one rate after another unreasonable until the carriers had been brought to terms."

And at page 428:

"The immediate effect of this decision was to prevent any enforcement of orders relative to rates by the commission. The carriers immediately refused to obey any orders which the Commission issued for the redress of grievances. This policy has been manifested with increasing clearness during the five years subsequent to the decision.

It has become more and more certain that the denial of the right not only to pass upon the reasonableness of a particular rate, but to prescribe what rate should supersede it, means the abolition of all control whatever."

Moreover, as shown, damage to shippers who have lost in the past cannot be estimated, and "power to pass upon the reasonableness of such rates prior to their enforcement as a consequence, constitutes practically the only safeguard which the shipping public may enjoy." And it is not only as to rate making that the want of power is felt. A single example will suffice. It was proven that the Atchison Road paid out over seven million dollars to favored shippers in rebates long after the law against discriminations went into effect.

As shown by the Industrial Commission, there are at present only two possible courses open. (1st.) Leave all rate making supervision or control to the courts, and this is the situation at present. An important difficulty is pointed out in that "the only redress for an unreasonable rate is a changing of the rate itself, that is to say,—an order compelling the application of a new rate to suit the circumstances." This remedy cannot be secured under our constitution, inasmuch as the function of the United States Courts are and must be entirely judicial. The second possible course "is to clothe the Commission with enlarged powers in respect to supervision and control over rate making." This the Cullom bill sought to do, with the right of appeal to the courts. We have already seen that the Congressional control of interstate commerce is identical with state control of local commerce, and this overwhelming opinion of experts that such power should be conferred upon the Interstate Commerce Commission is directly in point on the question of State Commissions.

Turning now to the law of Minnesota as an illustration of regulative commissions, we find that the law of 1885, creating the State Railway and Warehouse Commission, made it merely advisory, with power only to recommend rates, as the Massachusetts law stands today. In 1887, a bill was passed modeled upon the Interstate Commerce law, the most important exception being that the board had power to fix and change rates. The Commission reduced switching rates and the rate on milk, and the companies refusing to obey, the Supreme Court of Minnesota held that the intent of the act was to make the Commission's decision final and to preclude all judicial inquiry as to the reasonableness of the rates, and that the legislature had power to do this. The Supreme Court of the United States reversed this decision on the ground that the reasonableness of the rates was a judicial question, and held the law, as construed by the Minnesota court, to be void. In 1891 the law was amended to meet this objection, and the law was again amended in 1897 to give the

Commission power to investigate and prescribe rates upon its own motion.

The Commission fixed a joint through rate on hard coal from Duluth to New Ulm, over two lines of railway, and apportioned the same, as the railroads failed to agree upon the division. This power was sustained by the State Supreme Court in *State v. Minneapolis & St. L. R. Co.*, 83 N. W., 60. By the amendments of 1894 and 1895 the rates fixed by the Commission are made *prima facie* evidence of their reasonableness, and this too was sustained in that case as casting the burden upon the party seeking to set aside the rate. The so-called "commercial necessity, namely, the application of principles in fixing rates which are forced upon carriers by various conditions and situations," is also discussed and sanctioned, and the case is perhaps the most instructive and important one that has yet arisen under the Minnesota law. An appeal has been taken to the United States Supreme Court and the same has not yet been decided, so far as I am aware. However, the general features of this law are identical with the Texas act, all of which were sustained by the United States Supreme Court in the Reagan case, already cited.

It is unnecessary to cite cases to the point that the authority to designate reasonable rates, given by a legislature to a railroad commission is not an unconstitutional delegation of legislative power. It is quite customary to make the schedule of rates fixed by the Commissioners *prima facie* evidence that the rates are reasonable, and this is not an infringement of the right of trial by jury.

The case of *Stone v. Farmers' Trust Co.*, 116 U. S., 307, involving the validity of the act of the State of Mississippi, delegating such power to a Board of Railroad Commissioners, was considered as settling this question, although this specific objection was not made in that case.

Chicago N. W. R. Co. v. Dey, 35 Fed. Rep., 866, 1 L. R. A., 744;

State v. Railway Commission, 37 N. W. Rep., 782 (Minn.).

State v. Railway Commission, 35 N. W. Rep., 118 (Neb.).

THE LONG AND SHORT HAUL PROVISION.

Nearly all commission acts contain long and short haul provisions and few people comprehend the difficulties of this subject, or the absolute necessity for some elasticity in prescribing terms and conditions for long and short hauls. In my opinion, one of the most dangerous provisions that can be inserted is a hard and fast rule which loses sight of the so-called "commercial necessity," which the courts have already sanctioned.

In a law introduced at the last session of the legislature it was provided as follows:

"It shall be an unjust discrimination for any railway, subject hereto, to charge or receive for transportation of persons or property to any station any greater compensation than it charges for transportation of persons or property of the same class to any more distant station in the same direction."

This goes much farther than the Interstate Commerce long and short haul provisions and further than the Minnesota or Kentucky acts, and since that bill was drafted in a very recent decision by the Supreme Court of the United States, a similar regulation in the State of Kentucky has been held to be void as an interference with interstate commerce. This is the recent case of *Louisville & N. R. Co. v. Eubank*, decided by the Supreme Court of the United States, January 27th, 1902. The case was originally argued in November, 1900, but it was ordered for re-argument, and Justice Peckham writes the opinion, Justice Brewer and Justice Gray dissenting.

The Constitution of the State of Kentucky, Sec. 218, provides that it should be unlawful for any common carrier to charge a greater compensation for a shorter than a longer distance over the same line in the same direction, the shorter being included in the longer distance, provided that the Railroad Commission upon investigation might authorize a less charge for longer than for shorter distances. This is a copy of the Interstate Commerce long and short haul clause.

The railroad company made a charge of 25 cents per hundred pounds for tobacco carried from Franklin, Kentucky, to Louisville, Kentucky, which is 134 miles, and included in and a part of the distance of 185 miles from Louisville, Kentucky, to Nashville, Tennessee, for which long haul a charge was made of 12 cents per hundred pounds, there being water competition between Louisville, Kentucky, and Nashville, Tennessee, which required the railway company to carry freight between the latter points for less than a reasonable charge. It was decided that authorizing the commission upon application to permit the company to charge less for longer than for shorter distances was immaterial. If the provision in question, if enforced, does directly affect interstate commerce, its invalidity is not cured by the fact that the railway commission might permit the charges to remain. Justice Peckham, in delivering the opinion of the court, says:

"The vice of the provision lies in the regulation of the rates between points wholly within the state by the rates which obtain between points outside of and those which are within the state." It being conceded that 25 cents per hundred pounds is a reasonable rate for 134 miles between Franklin and Louisville within the state, it is said the company would be prevented from entering into interstate

commerce between Nashville, Tenn. and Louisville, Ken., where there was water competition, or it would be precluded from charging and receiving a reasonable rate between the points in the state of Kentucky.

It is said: "Is it an answer to this statement to say that the company can get this business (interstate commerce) by lowering its rates within the state, to the same rates as charged from Nashville? Is it bound, in order to secure this interstate commerce, to lower its rates all through the state? If it be, is not the law which accomplishes this result a direct interference by the state with interstate commerce? And if it do not lower its state rates and in consequence must raise its interstate rates, in order to make its state rates valid, and thus must lose to an appreciable and important extent the interstate commerce, is not a law from which such necessary and direct consequences result, a regulation in effect by the state of that commerce which ought to be free therefrom."

In conclusion, in arriving at the judgment that the constitution of Kentucky is invalid, so far as it is made applicable to or affects interstate commerce, Justice Peckham says:

"In the case at bar the state claims only to regulate its local rates by the standard of the interstate rate, and says the former shall be no higher than the latter, but the direct effect of that provision is, as we have seen, to regulate the state rate, for to do any interstate business at a local rate is impossible, and if so it must give up its interstate business or else reduce the local rate in proportion. That very result is a hindrance to and interference with and a regulation of, commerce between states, carried on, though it may be, by only a single company."

Now the singular thing about this decision is that the Kentucky provision is an exact copy of the interstate commerce long and short haul provision, which is upheld as a regulation of interstate commerce. While some of us may agree with the conclusions of Justice Brewer, his argument in fact shows that the operation of the law, in the instance under consideration, would work great injustice to the railroad.

In *Louisville, etc., Ry. Co. v. Kentucky*, decided two weeks before by the same court, it was held that this clause did not affect interstate commerce where all the points were within the state.

The fact of the matter is, that in order to get through business at competitive points a railroad is often compelled to carry goods at less than a reasonable rate; sometimes it can actually earn a profit in doing so at actual cost or less, rather than lose all the through business, and have its property lying idle. And it is unjust, in short, contrary to the 14th Amendment of the Federal Constitution to compel

the railroad to make local rates at less than reasonable prices, for the sake of getting a part of the through business at competitive points.

There is a most instructive discussion of the long and short haul question in the final conclusion of the Industrial Commission, Volume 19, pages 355, and 433 et seq. It is said at page 356:

"One of the most striking facts about railroad industry is the extreme fluidity of freight, if we may coin a phrase. Once loaded upon a car, it appears to make very little difference whether the distance hauled be 500 or 1,500 miles. Twenty-five years ago there were 20 competitive routes between St. Louis and Atlanta, varying in length from 526 to 1,855 miles respectively. Even between Boston and Chicago, competition by way of Newport News, over a line more than 1,600 miles long, is effective, with the direct route scarcely more than 1,000 miles in length. Freight transportation from New York to Denver may be carried more than 3,100 miles via New Orleans, as against 1,940 miles direct, one route being 62 per cent. longer than the other. Fruit from southern California may be successfully transported under competitive rates by way of Portland, Oregon,, and the Great Northern Railway. The same fruit may work its way down through the southern part of the United States after going for more than 1,000 miles laterally before it begins its journey east. Instances of this sort may be multiplied indefinitely."

Section 4 of the original interstate commerce act was designed to prevent discrimination between localities, and is as follows:

"That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included in the longer distance."

The interpretation of the long and short haul clause turned upon the construction of the phrase "under substantially similar circumstances and conditions." There is a most instructive review of the decisions of the Interstate Commerce Commission and of the courts, in Vol. 19, Reports of the Industrial Commission, page 439 et seq., and instances are given of "rare and peculiar" cases under which the Commission from the first recognized the necessity of exempting carriers from the prohibition of charging less for a longer than for a shorter haul over the same line, and it is there shown that the United States Supreme Court has ruled, "that competition, whether of trade centers or of railroads, must be recognized as a factor in the determination of the similarity of circumstances and conditions under which the fourth section of the clause should be applied."

See *Interstate Commerce Commission v. Alabama Midland Railroad Co.*, 69 Fed., 227, for an instructive case in point. It was there held that Montgomery, a large trade center on a navigable river and under effective competition from railroads centering there was entitled to a lower rate than local stations for shorter distances.

The operation of a hard and fast long and short haul clause in this state may be well illustrated by considering the effect upon grain rates to the Sound from points near the Columbia river where our railroads would meet water competition or the competition from shorter railway lines in Oregon. Our railroads might be compelled in order to meet the water competition, to make competitive rates at such points that would be ruinous or unreasonable as regards intermediate local points. Again, in the case of sharp competition in the Clearwater country in Idaho, the rates for the long haul across the state might materially affect all local rates between points in the state, or the local rates might preclude our roads from participating in the interstate trade from Idaho, and this from the recent decision of the United States Supreme Court, just examined, would be an interference with interstate commerce.

It seems clear that almost any general long and short haul provision will operate to prevent the making of special rates to competitive points, under the basing-point system now fully sanctioned, and ignores the so-called "commercial necessity" which the courts take into consideration in determining the reasonableness of rates. These facts cannot be ignored by the legislature, and it seems that the only remedy is to leave out entirely the long and short haul clause and place the matter absolutely under the control of a regulative commission or board which is in perpetual session. We should make the rates prescribed by them *prima facie* evidence of their reasonableness, with recourse to the courts, either by direct appeal or by action, or by both, as is provided by the Minnesota law.

See *State v. Railway Co.*, 83 N. W., 60.

In this connection, I will add that by all means the shippers as well as the railroad companies, should have the right to question in the courts the reasonableness of the rates prescribed by the Commission. This is one of the serious oversights in our present maximum rate law, and I am told was overlooked in a similar manner in most of the commission bills that have been introduced in our own legislature. If it be said that an unreasonably high rate, fixed by the commission, is void, and the shipper may contest the same at common law, I simply answer that this is all the more reason for providing the shipper with all possible facilities for securing his remedy.

ELEVATORS AND WAREHOUSES.

Entirely aside from the business of common carriers, the police power relates to the regulation of many other business enterprises which should properly be under the control of the commission under consideration. Some of these are so intimately connected with transportation as to be inseparable from the regulations relating to the carriage of goods and passengers. Chief of these is the warehouse business, and especially in grain producing states it is usual to place warehouses under the control of the Transportation Commission. In Minnesota, the board is styled the State Railway and Warehouse Commission, and the law of 1885 was based upon the Illinois elevator act, prescribing maximum charges for elevators, but it contained the improvement of placing grain inspection under state control. The Commission appoints a chief grain inspector, who appoints deputies at terminal points. Public warehouses must take out a license and are not permitted to mix grades. Prior to this law, the elevator business was in the hands of line elevators, companies having offices in Minneapolis or Duluth, and farmers and independent buyers could not get cars, the railroads obstructing them in every way possible. Now, by the laws of 1893, any person has the right to obtain, by eminent domain, on or near the railroad right-of-way, a place to put up an elevator, and the railroads are required to put in side tracks and to furnish cars even to the producer, making the producer independent of local elevator combines. All these matters appear to be peculiarly within the province of a Commission having control of transportation rates and trade regulations, and in this state, docks and wharves should be included.

See the instructive testimony of Mr. Teisberg, Secretary of the Minnesota Commission, Vol. 9, Industrial Commission Reports, pages 367-373.

Munn v. People, 69 Ill., 80, affirmed in 94 U. S., was the first of the grain elevator cases. The Illinois constitution, adopted in 1870, declared that all warehouses storing grain for a compensation were public warehouses, and the act of the legislature, April 25th, 1871, regulating public warehouses, prescribed maximum rates for storage. After this law was upheld, the legislature of New York passed a similar law prescribing maximum charges for elevators in cities containing 130,000 inhabitants, or upwards, and an elevator owner in Buffalo was indicted for exacting charges in excess of the statutory rate. The Court of Appeals of New York affirmed the judgment in *People v. Budd*, 117 New York, 1, and this decision was affirmed in *Budd v. New York*, 143 U. S., 517. The validity of the North Dakota

Statute was declared in *State v. Brass*, 2 N. Dak., 482, and this decision was affirmed by the Supreme Court of the United States.

For a time in this country it was understood that the police power of the state to regulate private enterprises was limited to such concerns as were virtual monopolies, but the elevator cases have exploded this theory. It was said in the *Munn* case that the Chicago elevators were virtual monopolies, although there were 14 warehouses in Chicago controlled by nine different firms. At least two other decisions of the United States Supreme Court, by Justices who concurred in the *Munn* opinion, limit the extent of the police power to cases where the public interest is so affected as to make the business practically a monopoly. *Wabash St. L. & T. Co. v. Ill.*, 118 U. S., 557; *Union Pac. R. Co. v. United States*, 99 U. S., 700. But in a number of cases, notably *Brass v. State of North Dakota*, 153 U. S., 391, by a divided court, five justices to four, it was finally settled that the application of the rule is not limited to monopolies. See also *People v. Budd*, 117 New York, 1; 5 L. R. A., 559, affirmed in *Budd v. New York*, 143 U. S., 517.

Justice Brewer, who wrote the dissenting opinion in the *Brass* case, laid stress upon the distinction that there was no monopoly shown; that there were some six hundred elevators owned and operated on and along the line of the Great Northern road by 125 different persons, varying in cost from \$500 to \$5,000; and further that a person at a cost of less than \$200 could provide himself with all facilities for storing the entire product of an ordinary farm. Justice Brewer says: "Obviously elevators along the line of that road were as plentiful as other institutions of industry and as easily and cheaply constructed and therefore savoring no more of monopoly."

The Supreme Court of the United States in the *Brass* case sustained the Act of March 7th, 1891, of the legislature of North Dakota whereby all elevators and warehouses operated for the purpose of handling grain for profit, were declared public warehouses to be operated under certain restrictions, and were placed under the control of the railroad commissioners, and whereby maximum rates for charges for the elevation and storing of grain were fixed.

Justice Shiras in delivering the majority opinion disposes of the three arguments by which the facts in the Dakota case are sought to be distinguished from the Chicago and Buffalo cases, namely: (1) Geographical differences suggested by the fact that the other cases arose in large business centers, (2) the difference in the method of carrying on the business in North Dakota, showing that there was no practical monopoly, and (3) the fact that Budd's warehouse was built principally for his own private purposes.

Upon the second point Justice Shiras says:

"When it is once admitted, as it is admitted here, that it is competent for the legislative power to control the business of elevating and storing grain, whether carried on by individuals or associations, in cities of one size, and in some circumstances, it follows, that such power may be legally exerted over the same business when carried on in small cities under the same circumstances. It may be conceded that that would not be wise legislation which provided the same regulation in every case, and over-looked differences in the facts that called for regulations, but as we have no right to revise the wisdom or expediency of the law in question, so we would not be justified in imputing an improper exercise of discretion to the legislature of North Dakota."

Answering the third point, he states that it is not understood that that law requires the owner of a warehouse built for his own use to receive and store the grain of others, but only the warehouses operated in whole or in part for profit. "Then he becomes subject to the statutory regulations, and he cannot escape them by asserting that he also elevates and stores his own grain in the same warehouse. As well might a person accused of selling liquor without a license urge that a large part of his liquors were designed for his own consumption and that he only sold his surplus as a mere incident." The provision of the law requiring elevator-men to insure grain stored with them, is also upheld.

REGULATION OF OTHER BUSINESS ENTERPRISES.

Another subject of the exercise of this police power is the business of boom companies, which on many of the rivers in the state not only interfere with navigation and the free use of the streams, but materially affect our immense logging interests in their respective localities.

There are numerous legislative regulations of the care and salvage of logs. See *Underwood Lumber Co. v. Pelican Boom Co.*, 76 Wis., 76; *West Branch Lumberman's Exchange v. Fisher*, 150 Pa., 475; *Proprietors of Side-Booms v. Haskell*, 7 Me., 474; *Pere Marquette Boom Co. v. Adams*, 44 Mich., 403. In this last case Judge Cooley comments upon the great difficulty at the trial entertained by both parties in fixing any standard to measure the reasonableness of a boom company's charges, involving the value of the real estate, their capital, improvements, receipts, disbursements and profits, and he concludes as follows:

"This case shows, however, the importance of some legislation for fixing the charges either by statute directly or by some Board or local authority authorized or empowered for the purpose. The ob-

jection to leaving such charges to be measured by the discretion of the company itself or by the uncertain judgment of successive juries are very manifest."

It seems clear that the powers of the Commission should include control over telegraph and telephone companies. The power of the Railroad Commission to fix rates for telegraph and telephone companies, seems to be conceded. *State ex rel. Railway Commission v. Western Union Telegraph Co.*, 113 North Carolina, 213; 22 L. R. A., 570; *Leavell v. Same*, 116 North Carolina, 221; 27 L. R. A., 843. Other cases of the frequent exercise of legislative authority upon this subject are Canals: (*Perrin v. Chesapeake & D. Canal Co.*, 50 U. S., 172). Ferries: (*State v. Hudson County Freeholders*, 23 N. J. Law, 206). Toll Roads: (*Snell v. Chicago*, 130 Ill., 413). Bridges: (*Covington & C. Bridge Co. v. Kentucky*, 154 U. S., 214). Wharves: (*Ouachita & M. R. Packet Co. v. Aiken*, 121 U. S., 440).

The appropriation of water in our arid districts and the regulation of the supply and charges for water for irrigating purposes, is sure very soon to demand the exercise of this police power of the state, and it will only be a very short time, in my opinion, before the control of irrigation in this state will have to be delegated to a regulative board. I see no reason why administration of all the police regulations of private business enterprises should not be lodged in a single board.

Any regulative commission should, of course, be clothed with full control over safety appliances, grade crossings, etc., as is the Massachusetts board, and the Massachusetts and Minnesota provisions giving them authority to fix and control the issue of new capital stock are clearly wise and necessary. It should be made the duty of the commission to prosecute for all violations of the anti-trust provision of our constitution, or laws passed to restrain combinations and pooling, as the commission will gain more knowledge of such violations and take more interest in such matters than any other state authority.

TAXATION.

I will bring this lengthy paper to a conclusion with just a word on the taxation of railroads, a subject that is broad enough for a paper by itself. The testimony of Prof. Adams, statistician of the Interstate Commerce Commission, given before the Industrial Commission, February 5th, 1901, Vol. 9, p. 373 et seq., explains the Michigan system of the valuation of railroads, which it seems is a decided improvement over the system of a tax on gross earnings, which was early adopted in a number of states; and it seems to me it is a very good system where there is a regulative railway commis-

sion. The people of Michigan, feeling that the tax on gross earnings of railways was disproportionate to the tax on general property, created a special tax commission, to make an investigation. The theory of the commission was to appraise, (1st) physical properties of the roads on the theory of the cost of reproduction, adopting the classification of construction expenses prescribed by the Interstate Commerce Commission, consisting of 31 general items. Personal investigation was made by competent engineers, profiles of the road secured; experts representing the commission examined the rolling stock, warehouses and docks; and real estate men the real estate, and so forth. (2d) The non-physical property valuations were also arrived at by the methods fully explained, and the result was undoubtedly the fairest valuation of railroad properties ever made, and resulted in a great increase in the taxes paid by the railroads over that previously received on the gross earnings.

In Indiana there is a similar system, the matter of assessing and taxing railroads, telegraph companies, and street railways being in the hands of a state board, and the details of the system have been worked out in the most complete and satisfactory manner, and the result has been that a fair and uniform rate of taxation has been secured and the taxes upon the railroad companies very much increased. The Indiana law was bitterly contested by the corporations, but was fully sustained by the United States Supreme Court in the instructive cases of *Cleveland etc., R. Co. v. Backus*, 154 U. S., 439, and *Pittsburg, etc., R. Co. v. Backus*, 154 U. S., 422, affirming the Indiana Supreme Court in the same cases in 133 Indiana Reports.

The subject of the taxation of railway and telegraph companies was investigated by the Industrial Commission. See Vol. 9, pp. 374, 382-4, 316-17, 204-5. The final conclusions of the Industrial Commission appear in Vol. 19, p. 1058, et seq.

Briefly stated, it seems that the appraisements by a state board instead of by local assessors, has been commonly adopted in the United States, but there are the most varying methods for arriving at the value of the property. Prof. Seligman enumerates 13 different methods, and it seems that many of the states have adopted gross or net earnings as the basis of taxation of certain classes of corporations, and in some few cases, the taxes are levied at progressive rates. It seems clear, however, that the Michigan and Indiana plans for arriving at the actual value of physical property is a surer method of reaching exact justice.

It seems perfectly proper, also, to levy special franchise taxes and these it seems, should be based largely upon the profits or earning ability of the company. This method is particularly applicable to

express companies, telegraph and telephone companies, and street railway companies where the franchises are of peculiar value, and the profits often very large in comparison with the amount of physical assets. There are, of course, interstate complications, but these are not serious, and simply require the matter to be placed under the control of competent boards, having full authority throughout the state.

As a number of the tests of reasonableness of rates depend upon the value, or the cost of the reproduction of the road, bringing this subject of valuations within the province of a regulative railway commission, I see no reason why such a commission should not be clothed with the power of appraising the railroads for the purpose of taxation. The information necessary for taxation is essential to the commission in the fixing of a tariff of rates, and it seems that it would be a great saving to utilize it for both purposes. It would, of course, result in a greater uniformity of taxation throughout the state, and is clearly an appropriate office of a state board, rather than of local county boards.

CONCLUSION.

The complete history of the long and insistent conflict which the railroads have waged against all police regulations of their business is to be found in the adjudicated cases. To briefly summarize the situation, the more prominent deductions to be made from the decisions upon this subject are, in my opinion, as follows:

First. The duty of the state with reference to the police powers in the regulation of business enterprises affecting the public interests, is as clear and undoubted as the power itself, and never at any time in the history of English jurisprudence, was the duty to act as imperative as it is today, especially as relates to railroads in the United States of America.

Second. The simple general rules of maximum rate laws and long and short haul prohibition clauses have been found utterly wanting in stability or elasticity to meet the highly complex conditions of modern railway competition, or to answer the tests of reasonableness laid down and enforced by the courts.

Third. Railway commission acts are no longer experiments. The general features of the more successful bills have been sustained time and time again and there should be no trouble whatever in drafting a bill, all the provisions of which will be sustained by the courts.

Fourth. The rates and regulations prescribed by the commission are reviewable by the courts and can be amended at any time, if exact justice is not at first accomplished.

Fifth. The greatest mistake that can be made is to fail to appreciate the extremely delicate, complex and difficult nature of the task and the enormous power of regulative commissions. The commission should be absolutely free from political bias or influence, and above all suspicion, and the nature of the duties of the board demand the highest degree of ability and faithfulness.

CONFLICTING DECISIONS OF FEDERAL AND STATE COURTS.

OUR NATIONAL CONSTITUTION THE HARMONIZER.

By Judge C. H. Hanford, Seattle.

Law is not an exact science. Precision and uniformity in the interpretation and application of legal principles is impossible. This must always be so, because responsibility for the true interpretation of human laws is divided among many judges, and it is necessary to exercise sound discretion in making application of the law to particular cases, and differences in the intellectual caliber and moral fibre of the judges, and differences of environment at the times of performing their functions, necessarily result in differences in decisions. General rules which are just in themselves, become unjust unless modified in their application to the facts of particular cases. As cases are multiplied, exceptions to general rules become as well established as the rules themselves, and as cases are distinguished by their particular facts from precedents, every judicial decision to be sound, if not controlled by the proper application of a rigid rule prescribed by the written law, must be squared with the fundamental principles of jurisprudence and the justice of the particular case. Thus common sense becomes a factor in the adjudication of individual rights, and the individuality of each particular judge, whose common sense is appealed to, becomes interwoven into the fabric of jurisprudence as we find it in the vast multitude of adjudged cases.

The national judicial system of the United States consists of one supreme court, having limited original and appellate jurisdiction; one circuit court of appeals having appellate jurisdiction only, in each of the nine circuits; one circuit court and one district court, having limited original jurisdiction, in each of the sixty-nine districts into which the states of the union have been divided. And each of the forty-five states has its own separate judicial system, consisting

of an appellate court of last resort, and nisi prius courts having superior jurisdiction, besides other subordinate tribunals. So there is organized within each state dual judicial systems, governed in part by the same general laws and rules of practice, operating independently, and subordinate only to the Supreme Court of the United States as an appellate tribunal common to both systems, with respect to cases coming within its limited jurisdiction. The jurisdiction of the supreme court to review decisions of the state courts is limited to cases in which a right claimed under the constitution, or a law of the United States, or under a national treaty, has been denied by the court of highest authority in a state. This leaves to the state courts a very wide range of jurisdiction, within which their independence of national authority is complete. The jurisdiction of the national courts over certain classes of cases is exclusive, but the major part of the jurisdiction of the United States circuit courts over common law actions and equity causes is concurrent with the jurisdiction of the state courts, and in this field of concurrent jurisdiction, differences in the opinions of the different courts may, and frequently do, result in conflicting decisions. It is equally true, however, that the decisions of the courts of different states conflict with each other, so that lawyers and litigants may find that, by the decisions of the courts, rights which are recognized in one state cease to be recognized or protected when the state boundary line is crossed, and that success or failure in a cause may depend upon the law of the forum.

The title of this paper comprehends disagreements between the courts of different states, and between the federal courts of different districts and circuits, as well as between the federal courts and state courts, and the allusion just made to the fact that conflicting decisions are to be expected in the judgments of state tribunals is intended to emphasize the idea, expressed in the first paragraph of this paper, that conflicting decisions are the natural product of conditions which are unavoidable, and my purpose is to show that there is no inherent antagonism between our national and state tribunals. The same line of argument may be carried still further, for it is true that the members of a single court frequently find it impossible to agree in their conclusions, and even the rule of stare decisis is not always potent to prevent the courts from overruling their own previous solemn pronouncements of the rules and principles by which the rights of suitors must be measured and determined. There is no hostility between our national and state courts, and I have not found in any branch of the law into which my research has extended, the federal judiciary arrayed in maintaining any rule or principle contrary

to a line of decisions by courts of different states. If there is any such thing as a doctrine of the federal courts at variance with a doctrine of the state courts, I have not discovered it. There have been instances of clashing between the two systems within a single state, and contention as to a particular subject of controversy, but I cannot remember of any general controversy similar to that which continued through two centuries between the court of King's Bench and the Admiralty Court in England, over the limits of admiralty jurisdiction in that country. An unwritten rule of comity pervades the jurisprudence of our country, and the federal courts are prohibited by Sec. 720 of the U. S. Revised Statutes from issuing injunctions to restrain proceedings in the state courts. These rules, like a treaty of peace and amity, keep the courts of both systems from encroaching upon each other, and from engaging in an unseemly scramble for jurisdiction, but do not have any effect to prevent conflicting decisions.

The tendency of conflicting decisions is towards confusion, uncertainty and chaos, and the most dire consequences may be apprehended unless efficient re-actionary forces are kept in active operation. The importance of this subject merits the earnest attention of all patriotic citizens, and lawyers, especially, are called upon to watch it. The jealous watchfulness of those best qualified to understand the true import of this tendency, and to foretell the consequences, is necessary to keep the courts from drifting too far upon the sea of uncertainty, and it is equally important to guard against unnecessary alarms, and to prevent ill advised attempts at reforms which are liable to impair the efficiency of the courts without securing any positive benefits. The independence of the judiciary is a prime essential to the just enforcement of individual rights and the preservation of liberty. That independence cannot be abridged without impairing the vital force of judicial integrity and disturbing the foundation of national greatness. How to preserve judicial independence, and also provide effective checks and counter balances, is one of the greatest problems which statesmen and the most profound thinkers have ever been called upon to solve. The record of the Constitutional Convention proves that the great men who formulated our national constitution gave earnest attention to this subject, and the practical operations of our government under the constitution for more than a century prove the wisdom of their conclusions. The supreme court, established and organized pursuant to the provisions of the constitution, is the great regulator of judicial functions in this country. Its jurisdiction, though limited, is broad enough to comprehend all branches of the law, and state tribunals, as well as the subordinate federal courts, accord to it the respect due to the highest

court of the land, and gladly accept the light which radiates from its pronouncements; in that way it legitimately exerts a harmonizing influence very much wider and more extended than the range of its jurisdiction; in the exercise of its constitutional powers it speaks with authority, and ends controversies, and in that way it has positive force, giving certainty to the law, and checking the tendency of conflicting decisions by other courts, to unsettle fixed principles.

The states of the American Union were first united under articles of confederation. Only a few years of experience under that arrangement was sufficient to convince the founders of the republic that it is impossible for the states to maintain harmonious relations without national authority, competent to preserve the means essential to responsible government, and to reconcile differences and suppress conflicts between the states and their citizens. Yet the principle of local self-government was dear to them and not to be abandoned. The conditions demanded the creation of a national government with ample powers, which would not supplant nor obliterate the then existing state governments nor destroy the plane of equality upon which each state entered the union. The principles then regarded as fundamental, and which were insisted upon, have been steadfastly adhered to, through all the vicissitudes of peace and war which mark the pages of our national history. In accordance with these fundamental principles, the constitution has been expounded, so that we have a national government, which is supreme within its sphere, and state governments, each of which is supreme within its sphere, and by constantly observing the lines which circumscribe national and state authority, both systems operate harmoniously together. Pursuant to the provisions of the constitution, the federal judiciary has been established to enforce national laws, to protect individual rights founded upon national laws or treaties, to adjudicate differences between different states, and questions arising out of grants from different states, to determine controversies to which foreign ambassadors, ministers and consuls and their attaches are parties, and controversies between citizens of different states and between citizens and aliens, and to have jurisdiction of all admiralty and maritime causes. Under existing laws enacted by Congress, however, the jurisdiction of the courts is not as extended as the constitution warrants. In addition to the few matters over which it has exclusive original jurisdiction, the supreme court has appellate jurisdiction by writs of error, or appeals, or writs of certiorari, to review all decisions of the subordinate federal courts; and by writs of error or appeals to review decisions of the highest courts of the states which deny any right claimed under the constitution, laws, or treaties of the United States.

Conflicting decisions of questions not affected by local laws or customs, nor by the national constitution, laws or treaties, may be reconciled in time by the maturer judgments of the courts, or by appropriate legislation. Statutes declaratory of the common law have been frequently enacted in England as well as in this country, to remove doubts and uncertainty with respect to disputed questions.

An important principle, tending to promote harmony between the federal and state judicial systems has become permanently established in our jurisprudence. It is the principle that the laws of the several states, except where the constitution, treaties or statutes of the United States otherwise require, shall be rules of decision in trials of common law cases, in the courts of the United States, and that the decisions of the highest court in each state in so far as they expound and declare the local laws of that state are binding upon the federal courts, including the supreme court. This rule has its origin in the fundamental doctrine that there is reserved to each state the power to regulate its own internal affairs. A disputed question of state law may be submitted for adjudication in a federal court before the same question has been passed upon by the supreme court of the state. In such a case, the court must determine the rights of the parties according to its own opinion of the law. Its decision will be only a precedent for subsequent cases, not an authoritative determination of the question. Unless the decision should be so well supported by sound arguments and reason as to silence all further contention, the law will remain unsettled until the highest court of the state decides the same question, and its decision, if to the contrary, will overrule the decision of the federal court and establish the rule for future cases, which must be accepted by all courts unless it shall be abrogated by another decision of the highest court of the state, or by an act of the legislature. The rule that the federal courts must accept the decisions of the highest court of a state as authoritative declarations of the laws of that state, is not absolute, but has its exceptions. For instance, the federal courts will not be bound by a decision of the highest court of a state if it be shown that, by inadvertence, the state court unintentionally ignored a valid, existing statute of the state; and there have been instances in which federal courts have refused to be bound by state decisions, on the ground that they were manifestly unsound and shocking to a person's moral sensibilities. But the right to depart from state decisions of questions of local law, should always be exercised with great caution.

Another rule designed to preserve harmony and ensure the enforcement of the laws and judicial determinations of each state is prescribed in our national constitution in the following words: "Full

faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state." This is one of the most important and valuable provisions of the constitution. A good illustration of the practical working of this rule is found in a case the facts of which were as follows:

An insolvent debtor, after mortgaging certain merchandise in New York, removed it to Chicago, where it was attached in an action by another creditor, and sold under an execution to satisfy the judgment rendered in that action against the mortgagor. Subsequent to the levy of the attachment, and before the execution sale, the mortgage was recorded in Chicago. Under the laws of New York, the mortgage took effect as a lien immediately upon its delivery, and it was a valid lien upon the property in New York before its removal to Chicago, but under the Illinois statutes the lien was not in effect in that state until the mortgage was recorded there. All the parties were citizens and residents of the state of New York. After the judgment had been satisfied, the mortgagee sued the attaching creditor in New York, and obtained a judgment for the value of the security, lost by conversion of the mortgaged property, which judgment was affirmed by the Court of Appeals of that state, but was reversed by the Supreme Court of the United States. The supreme court decided that when it was brought to Chicago, the property became subject to the valid laws of Illinois, and was lawfully sold to satisfy the judgment rendered in that state, that the courts of New York had not given full faith and credit to the laws and judicial proceedings of the state of Illinois, and had thereby denied a right lawfully claimed under the constitution of the United States. *Green v. Van Buskirk*, 7 Wall., 139.

Another illustration of the rule is found in recent decisions of the supreme court, holding that a divorce granted in one state, by a court having jurisdiction according to the laws of that state, to one of its bona fide citizens, domiciled there at the time, is valid in every state of the Union, notwithstanding the fact that the defendant was domiciled in another state, the laws of which do not recognize the grounds upon which the divorce was granted, as being lawful cause for divorce; and notwithstanding the further fact that by the decisions of the courts of the latter state, such divorces are held to be void. In other cases, decided at the same time, the court held that divorces granted in a state to parties temporarily sojourning therein for the express purpose of taking advantage of the facilities afforded by the laws of that state, for obtaining that form of relief easily and quietly, the defendants being at the time domiciled elsewhere, are void, notwithstanding the fact that the court granting the divorce actually decided, upon evidence taken, that the plaintiff had resided in the

state for a time previous to commencing proceedings sufficient to entitle him to make the application, and that the court did have jurisdiction. In these latter cases the jurisdiction of the supreme court was invoked under the full faith and credit clause of the constitution, but the court held that as the divorces had been obtained by fraud, the courts granting them did not have jurisdiction, and that no valid constitutional rights had been denied by the courts of other states which treated the divorces as nullities. In brief, the authority of each state to make valid laws affecting the status of its bona fide inhabitants is re-affirmed by the supreme court, in the series of decisions referred to, but jurisdiction is denied to all courts to grant divorces clandestinely to persons who are only visitors. And the decisions established rules whereby the validity of divorces from non-resident defendants can be ascertained with certainty, the rules so announced being uniform in all the states. Possibly it may be said that by citing these decisions I have proved too much, for they in effect nullify subsequent marriages of divorced persons in a multitude of cases, and bastardize the innocent offspring, and unsettle inheritances. But these evils are not products of the decisions, but of fraudulent practices, which the decisions will stop. In truth, the decisions go far towards promoting domestic peace and tranquillity, for now there is an end of controversies as to the validity of divorces granted by courts, at the place of their domicile to parties from absent husbands or wives, and now a person domiciled in New York, who re-marries there after having been divorced by a lawful decree of a court of another state, cannot be punished for the crime of bigamy; and disreputable divorce lawyers who have heretofore maintained agencies in different states, to entice discontented husbands and wives to combine the pleasure of a trip to a distant state with an opportunity to obtain a divorce, without a contest, by clandestine proceedings, must cease to do that kind of business.

With a court in each state endowed with supreme authority to expound state laws, and the national supreme court having supreme authority to expound national laws, and commanding the respect of all other courts, for its decisions expounding principles of general jurisprudence, and legislative power in the government, competent to make all laws plain and certain, which may be appealed to, when necessary, to check any dangerous tendency towards confusion, a very high degree of accuracy in judicial proceedings is assured, for in the courts of last resort the rules and principles supported by conflicting decisions must ultimately give place to the authoritative declarations of the law by these courts of final resort, or the legislative power may be exerted to that end. Thus far in our

national life, the two judicial systems have operated together with complete success. The supreme court provided by the constitution to be the arbiter of disputes between the states, and to control forces which without a regulator would necessarily become discordant, must, so long as its members are worthy of their exalted stations, be the great conservator of judicial integrity in this country, and the preserver of judicial independence. Its influence has been, and we may justly hope will ever be, hostile to ultra doctrines and experimental theories. If the future develops new conditions demanding the application of legal principles to original controversies, and leading to conflicting decisions, we may still put our trust in the constitution, and be thankful for the instrumentality of the supreme court, adapted and competent as it is, to harmonize conflicting decisions and ensure the administration of justice with a degree of certainty and precision not otherwise to be hoped for.

The Bible contains this very wise admonition: "Prove all things, hold fast to that which is good." I rely upon this quotation to justify a prolongation of this paper, for the purpose of proving, in another way, that the supreme court is a very good institution. Gold will stand the test of fire, and real sterling merit never becomes more conspicuous than when subjected to criticism and adverse comment. The veneration in which the supreme court is generally held has not deterred a few persons from assailing it, and the wisdom of the great men who constructed the constitution is vindicated by the folly of the denunciations hurled at the supreme court. A fair sample of the matter to which I refer is found in an address delivered before the State Bar Association of Georgia, four years ago, by its president, which was afterwards printed in pamphlet form and extensively circulated, and also published in the *American Law Review*.

The address, as published, is prefaced by a commentary upon it made by Judge Speer, one of the U. S. District Judges for Georgia, as follows:

"I was somewhat startled to find on yesterday morning that our excellent President had been the victim of some lingo, doubtless, who had instilled into his mind all unconsciously to him, perhaps, a little jealousy of the noble system of which I am an unworthy member—a system which I think is as pure and spotless as the charming *Desdemona* herself. I trust that he will not long remain in the category of those who are described by the poet when he says:

'What damned moments counts he o'er,
Who dotes yet doubts, suspects yet fondly loves.'"

To which comment, the speaker made retort by quoting from the *Literary Digest* as follows:

"Othello's record has been dug up in Venice by a scholar named Cesare Augusto Levi. He has discovered and proved by documentary evidence (which the London Telegraph accepts):

First—That Othello did not kill his Desdemona.

Second—That her name was not Desdemona, but Palma.

Third—That she was not an abused lamb, but no better than she should be, if one-half as good."—Literary Digest of July 9, 1898, page 43."

This brings to mind the following incident: A child had written a story about a little girl who had a party, to celebrate her doll's birthday, on the 31st day of June. To a criticism upon the impossible date, the young authoress responded rather impatiently: "Why, the doll was an impossible person."

By this ruthless effort of the speaker to demolish one of the most beautiful creations in the realm of fiction, we are warned in advance, that the product of the best thoughts and most patriotic efforts of Washington, Hamilton, Franklin, Madison, and their colleagues, embodied in the Constitution of the United States is not too sacred, nor too strongly intrenched in the affections of the people to be an object of the destructive energies of the President of the State Bar Association of Georgia. The title of the address is, "Aggressions of the Federal Courts," but from the matter it is plainly manifest that the purpose of the speaker was not only to scold the courts for their transgressions, but also to assail the judicial system organized pursuant to the constitution. The speaker, with apparent candor, declared his purpose, by saying: "I am discussing a system, not men." I will not quote extensively from this dreary dissertation, but as an index to its general character I will exhibit in one group all the different sub-titles under which the speaker arranged its different parts:

"The Residence of Ultimate Power," "Scope of this Paper," "Injunction against Criminal Offences," "Courts as 'Promoters,'" "A Basic State Right Attacked," "Is this Case Prophetic?" "A Dangerous Power," "The Court as Mayor and Aldermen," "The Root of Many Evils," "Interstate Commerce and Federal Courts," "Adding Fuel to Flames," "A Fading, if not Blasted Hope," "A Case of Appalling Import," "A Confession of Guilt," "Federal Injunction Infringing Personal Liberty and Freedom of Speech," "Deb's Case, and its Lessons," "How Long, O Lord, How Long?" "A Humiliating Precedent," "Safeguards of Justice Swept Away," "Modern Strangling of an Ancient Right," "Jailing a Sovereign State," "Federal Judges as Railroad Managers," "An Able, but Inadequate Apology," "The Marshall-Hamilton Ghost," "Symptoms of Upheaval," "The 'City of Refuge,'"

"Dragon's Teeth and Revolution," "The Real Enemies of the Republic," "The 'Germ of Dissolution,'" "The Lawyer a Patriot."

The address begins by pretending to concede that, "The federal judiciary is a natural and—from one point of view—a necessary element in our federal government,"—and then immediately proceeds to argue that it is both unnatural and not necessary. It asserts that, "There is no court with jurisdiction over the British Empire," and that, "There is no imperial German Court to construe the statutes of the Imperial Parliament." That, "The power to annul statutes at discretion is the legislative power of an absolute monarch, * * a power greater than that of the Tsar of all the Russias or the War-Lord of Imperial Germany," and that the federal judiciary "is the only judiciary in the world at any stage of its history which has the power to thus blot a country's laws from her statute books." That, "the first decision of the Supreme Court of the United States, affirming the power of the federal judiciary to invalidate an act of Congress on the ground of its unconstitutionality," was received by many of the patriots of that day with forebodings, and was considered by them to be "The overthrow of one of the foundation principles of this republic, viz., the independence of the co-ordinate departments of the government." Thomas Jefferson is quoted in the address as having declared that it "placed the people under the despotism of an oligarchy," and as having prophesied the destruction of the union through the usurpation of the federal judiciary, in the following words: "It has long been my opinion that the germ of dissolution of our federal government is in the constitution of the federal judiciary, an irresponsible body, working like gravity by day and by night, gaining a little today and a little tomorrow, and advancing its noiseless step, like a thief, over the field of jurisdiction, until all shall be usurped." The necessary deductions from these assertions and quotations would seem to be, that the national supreme court is unnecessary, because, other countries do not have, and have not had, any such tribunal, and that the entire judicial system as a part of our national government is unnatural, because it is hostile to the life of the government, having an inevitable tendency to absorb other powers and to insidiously undermine the foundation of the government and finally accomplish its destruction. The address, by way of argument, refers to a number of decisions and orders made by the federal courts in particular cases. Amongst others, the famous injunction issued by Judge Jenkins against an anticipated strike of the employees of the receivers then in charge of the Northern Pacific railroad. After quoting selections from the injunction order, the address comments thereon as follows:

"Only a portion is expressed in this quotation. In fact, language is apparently exhausted in the effort to transform railroad employees, their friends, sympathizers and advisers, into mere dumb work-creatures. They were allowed to breathe, but they could not safely talk. And this was done without a hearing.

"In this mass of verblage two things are clear, and they are the salient points in this far-reaching decision: The employees could not quit work by any concert, no matter how badly treated or how poorly paid; and they could not strike. In the first respect, this decision made these employees slaves in so far as they could not voluntarily cease to labor. Is it not pathetic that the first court in the world to thus compel involuntary servitude by a free man is a court of that republic whose founders fondly believed they were establishing an asylum for the oppressed throughout all generations? In the second respect, the famous 'strike' is judicially condemned and prevented under penalty of imprisonment at the pleasure of one man who holds this vast power not by the choice of the people over whose destinies he presides with such stupendous authority."

As a matter of fact, when the whole history of that case and its results are brought into view, it affords no ground for any apprehension of the destruction of liberty by judicial usurpation of power. On the contrary, the facts prove that good sense and patriotism controlled the conduct of the employees of the Northern Pacific Railroad Company, who were or might have been affected by the injunction, and that patriotism and devotion to the cause of liberty were reinforced and strengthened by the final determination of the matter in the Circuit Court of Appeals for the Seventh Circuit. Judge Jenkins was led into an error, when he granted the injunction, but the engineers and other men employed in operating the Northern Pacific Railroad, instead of waiting for sympathy to gush from a convention of lawyers in Georgia, chose to assert and defend their legal rights in an orderly and lawful manner. They applied to Judge Jenkins for a hearing, and secured a modification of the order, and then appealed from the order as modified. The opinion of the Circuit Court of Appeals, delivered by Mr. Justice Harlan, contains a judicial guaranty of personal liberty strong, inspiring and grand as the Declaration of Independence itself, and if it did not lack novelty that decision would be worthy to be cherished in the hearts of the American people as a companion to the historic document written by Jefferson, and with the Emancipation Proclamation, whose author was Abraham Lincoln. The substance of the decision is condensed into the following paragraph: "It would be an invasion of one's natural liberty to compel one to work for or remain in the personal service of another.

One who is placed under such constraint is in a condition of involuntary servitude—a condition which the supreme law of the land declares shall not exist in the United States, or in any place subject to their jurisdiction." See *Arthur v. Oakes*, 63 Fed. Rep., 317. In accordance with the opinion, the injunction was further modified so as to bring it within the recognized rules of equity, sanctioned by the wisdom of ages. It will be a sad time for the poor, as well as the rich, if ever the courts shall be stripped of their power to afford preventive relief. It is easy to say that power to issue writs of injunction is dangerous, and may become harmful. Power in any form, if not controlled by intelligence, is dangerous, and may work mischief. To cripple the courts for such a reason would be as unreasonable as to reverse the wheels of progress, and deprive mankind of steam engines and electrical machinery, because they are dangerous, or to decry the wisdom of the Almighty in the creation of the ocean and the elements, because the forces of nature are dangerous, and frequently become destructive. Power is a necessity, and there is not more of it in the world than is needed for the good of mankind. To make it useful and prevent it from doing harm, it is necessary to distribute power, and adjust the balances so that different forces will resist and oppose each other in a manner to secure steadiness and healthy action. This is what the founders of the republic aimed to do in providing three co-ordinate branches of government, and the success of their plan has proved their wisdom. In times of national peril, the executive and legislative branches adopted such measures as were deemed necessary to save the life of the nation, just as a captain at sea would jettison part, or all, of his cargo, to save his ship and the lives on board, or as a surgeon would amputate a limb or destroy an eye to save the life of his patient, but when legislative enactments, suggested or provoked by circumstances incidental to the Civil War, came to be reviewed by the national courts, the judiciary, with a firm hand, gave protection and relief to individuals, and to states, up to the full measure of their rights according to the fundamental principles of our government and the provisions of the constitution.

The cases in which the Supreme Court restrained unconstitutional methods of dealing with the confederate states and their citizens are quite numerous. Students interested in this particular feature of national history may read with interest and profit the decisions in *Cummings' Case*, 4 Wall., 277, *Ex parte Garland*, 4 Wall., 333, *Texas v. White*, 7 Wall., 700, *United States v. Klein*, 13 Wall., 128, *United States v. Reese*, 92 U. S., 214, *United States v. Cruikshank*, 92 U. S., 542, *Windsor v. McVeigh*, 93 U. S., 274, *Virginia v. Rives*, 100 U. S., 313, *United States v. Lee*, 106 U. S., 196, *United States v. Harris*, 106

U. S., 629, and the Civil Rights Cases, 109 U. S., 3. After reading these decisions, all candid minds must be convinced that liberty could not thrive as well in this country, under the Jeffersonian idea, of a sickly family of weak and fretful states, as under the system which we have, whereby strong national life has been nourished and developed, and at the same time individual rights have been held sacred by the federal courts.

Abuses of the writ of Habeas Corpus and frivolous appeals to the Supreme Court have been practiced, to delay the execution of murderers. An instance of that kind is one of the specifications of aggressions. But it appears that the "red handed murderer" referred to was a woman, and that she escaped the gallows, "by a misapplication of mercy," due, probably, to tender regard, on the part of a Governor of a state, for her sex. The courts have been cautious in refusing to grant writs of Habeas Corpus, and in denying the right of appeal, and until controverted questions of constitutional law became settled by decisions of the Supreme Court, they were obliged to allow condemned criminals to litigate, but as the law becomes more settled, abuses are less frequent. The fact is, the federal courts have become very rigid in refusing to entertain applications in behalf of persons convicted of crimes under state laws, unless compelled to do so by the plain precepts of the constitution or laws. In this state, and in some others, the federal courts have gone so far as to refuse to permit their records to be encumbered by the filing of applications in cases appearing to be intended for delay only.

"Jailing a Sovereign State"—is an extravagant expression in the address, used to characterize the decision of the Supreme Court in the case of Tyler, 149 U. S., 164, affirming the validity of contempt proceedings in the United States Circuit Court for South Carolina, against a contumacious tax collector for persisting in attempting to distrain for taxes, property in the custody of a receiver. The doctrine is very old that legal process does not justify nor excuse an officer in whose hands it is placed for execution, in committing an unlawful act. It is also a familiar rule that when a court through an administrator, trustee or receiver has legal custody of an estate the property is not subject to distraint or seizure under legal process in the hands of another officer. The rule of the federal courts in receivership cases is to aid and not obstruct the collection of revenue due to the local government and payable out of such estates. Taxes are regarded as preferential debts, and the courts require their receivers to pay them out of any assets available. This rule was recognized and emphatically declared by the decision in the Tyler case, and there was nothing said or done by the courts in that case.

to provoke a collision between state and federal authorities, nor to excuse hysterical exclamations.

Under the sub-title of "The Root of Many Evils" the address comments on the decisions construing statutes defining the jurisdiction of the circuit courts, which established the rule that a corporation when a party to litigation has the same footing as a natural person with respect to the right to choose the national forum, and the address finds fault with the rule, for the reason that it deprives individuals of the right of trial by jurors of their own vicinage. In former times jurors of the vicinage were selected to decide cases because they were supposed to know the parties and have personal knowledge of the merits of each controversy. The justice of a cause, however, was liable to be subordinated to prejudices engendered by neighborhood gossip. Modern ideas of fair play require jurors to be impartial, and persons who have prejudged a case are disqualified from participating in the decision. In the organization of the federal courts, the district allotted to each court is larger than the districts over which the state courts have jurisdiction, and this circumstance is all that is likely to affect the right to a fair jury in a federal court. Whatever advantage there may be in one system over the other is in favor of the federal courts, because the jurors summoned from a large district are less liable to be affected by local prejudice than those gathered from a smaller district. But if the right of corporations to invoke the jurisdiction of the federal courts is the "root of many evils," the fault does not lie at the door of the judiciary, but with the people themselves, for they have the power, through their representatives in congress, to restrict or prohibit the exercise of jurisdiction by the federal courts in the litigation of corporation cases. The power of congress in this respect has been exercised to the extent of curtailing the right of national banks to litigate in the federal courts, and the fact that the same restrictions have not been extended to transportation companies, and other corporations, proves that the people generally have not felt the weight of oppression by the federal courts in the adjudication of their causes.

The speaker passed directly from the "Root of Many Evils" to the consideration of the interstate commerce law, and to "A Fading, if not Blasted Hope," and the address bewails the decisions which deny the authority of the interstate commerce commission, which is a special tribunal, created by congress, to fix rates for the transportation of merchandise by interstate railroads. In so deciding, the courts were controlled by the familiar rule that special tribunals created by statutes can lawfully exercise only such powers as the

law expressly confers. Power to fix rates was not given by law to the commission, and the decisions of the courts on the subject were effective to stop the usurpation of power by a special agency of the federal government. Yet these decisions are cited as instances in which the hopes of the people have been crushed by aggressions of the federal courts.

The speaker animadverted upon "Perversion of the Law of Receiverships," and "that brood of railroad receiverships which have in some instances scandalized the administration of justice and made the federal judiciary the object sometimes of public suspicion," but failed to mention any particular case under that head, except the Wabash Receivership case, and strange to say, at this point he turned aside from his course of wholesale condemnation, to praise Judge Gresham for having in that case refused to permit abuses of legal procedure at the demand of railroad wreckers.

The climax of the address was reached when the speaker declared that, "the frightful ghost of Marshallism and Hamiltonism is resurrected in the modern federal judiciary and stalks abroad unmasked." Happily, in the present age, the courts do not take a hand in hanging or burning witches, and lawyers cannot be frightened by ghost stories.

Another virulent attack upon the article of the Constitution which provides for the judiciary, written by one of the Justices of the Supreme Court of Texas, was published in Law Notes soon after the publication of the Georgia address in the American Law Review, and other articles and addresses published and delivered near the same time indicate, possibly, a concerted movement to inaugurate a crusade against the provisions of the constitution establishing the judicial branch of our government. But these denunciations fell upon the cold common sense of the people, without calling forth any response, favorable or otherwise. Such a fiasco could not have happened, if a real evil had been assailed by men of ability and prominence.

Occasional sacrifices of individual rights, through judicial errors, cannot possibly be avoided, because, infallibility is not an attribute of human character, but in the calm deliberations of the appellate tribunals, departures from true principles must in time be rectified. Errors do not beget permanent rules.

"Truth, crushed to earth, shall rise again;
Th' eternal years of God are hers;
But Error, wounded, writhes in pain,
And dies, among his worshippers."

The immutability of rules of decision which are sound and which

meet the demands of justice, is our anchor of hope, and we may repose confidence in the supreme court. From the beginning, its members have been men of eminent ability and probity. They have shed luster upon the jurisprudence of our country, and by their learning and research have illuminated the ways that were dark and obscure, and contributed towards placing our nation in the front rank among the nations of the earth. Men of the highest character are called to become members of that court, and if, perchance, a comparatively weak man should be elevated to a seat upon that bench, he could not possibly breathe the atmosphere of that tribunal, and listen to the profound arguments of the great lawyers who come within its portals, advocating great causes, and participate in its deliberations, without expanding and growing in knowledge and acquiring a degree of proficiency in performing the tasks exacted of great judges. The tendency of this age is in the direction of higher education, and elevation of the standard of fitness for their work on the part of men admitted to the learned professions. Lawyers are the leaders of advancing civilization, and the supreme court must be the last of our institutions to degenerate, for the reason that great lawyers and great causes make great judges.

REMINISCENCES OF THE BENCH AND BAR.

By Orange Jacobs, Seattle.

Mr. Chairman:

When I came to this city I was sent for by the president of this association and informed that Mr. Caton, on account of sickness in his family, could not be present upon this occasion, and he asked the privilege of substituting my name for that of Mr. Caton. At first I objected. But you who are acquainted with the persuasive eloquence of the president of this association can readily come to the conclusion that I finally consented. In the words of one of Lord Byron's heroes, "Much I strove and much repented saying I will not consent—consented."

I undertake a great task in attempting to edify this audience after having listened to the statesman-like, lawyer-like and able address to which you have just listened. The beauty and excellence of the addresses read to this association consist in the fact that they are not only the best thought, but the best expressed thoughts, of the person who prepared and delivered them.

It has been my good fortune to be acquainted with most of the judges who have dispensed justice not only in this State but in the territory. It will not do for me to pass the territorial line. I might come against living obstructions that might prevent my further progress. A word or two in regard to some of these judges. Judges Lander, Strong, McFadden, Lewis, Greene, Wingard, Burke, Jones, Wyche, Dennison and our present Federal Judge, Hanford, were all able men in their profession, and who at different times graced the bench in Territorial days. A word or two in regard to some of these gentlemen. Judge Strong, if you knew him, you will recall was a large man, intellectually and physically. Judge Wyche, some of you may have known—he was a man six feet in height and swarthy in complexion. In manners and habits he was a typical southern gentleman. As the bar used to say, he wore the smallest hat of any

man who ever presided on the bench—he also wore a number 12 shoe. But no man had a keener or more incisive intellect than Judge Wyche. I consider him one of the ablest men that presided on the bench or practiced law in the Territory. He was a sickly man, but indomitably courageous. I saw him on one occasion in Port Townsend in an important case when he was so badly bleeding at the lungs that in addressing the jury with his incisive eloquence he had to stop every few moments for the purpose of relieving his mouth from the bloody accumulation. This showed the character of the man. I think one of the ablest arguments that I ever heard when I had the honor to be one of the Supreme Court judges of this Territory was delivered by him. He was truly a strong man.

You all know Judge McFadden. Many of you have seen him. He was a jolly man and a whole-souled fellow and a good lawyer; and had he been in the city last evening, although his head white with the lapse of years, he certainly would have joined in some of the dulcet music that I had the pleasure of listening to.

Lewis you know, Greene you know. I will not say anything about these gentlemen.

The particular point to which I desire to direct your attention is the pioneer lawyer. I think I know something about his characteristics. In the first place he was a good fighter. His surroundings gave him inspiration in that direction. His environments were of the militant order. He was not only a good fighter, but he was a loyal fighter and I must say from my experience he was a persistent fighter, for, after the judicial umpire had counted him out, and called the next bout, he wanted to fight on still. In the next place he was a good reasoner, and I want to emphasize this point. He was so of necessity. He had no reports. He had to rely on his remembrance of general principles. And he learned to reason from those general principles to his conclusions; and his success at the bar depended upon the clearness of his statements and the cogency and force of his logic. The question with him was, what is the law. And he ascertained what the law was from reasoning from the general principles which he remembered to the conclusion which he desired. If an attorney now-a-days is asked what is the law, I am afraid that it is too often the case, to use the eloquent language of the Supreme Court of this State, he seeks to find a case "On all fours." He doesn't make any other inquiry. He doesn't exercise his reasoning powers at all; he goes into the library and hunts after a case on all fours with the facts of the case he has presented to him. The learned and honored Judge who has just so excellently addressed you has stated that the law was not an exact science. I do not know,

but what I differ from the speaker in this regard. Every profession has connected with it two things; a science and an art. The science consists of the principles upon which that art rests. Now I, as a lawyer, am prepared to maintain that the science of the law is just as accurate, just as complete, and just as reliable as any other science. As has been well said, law in its practical operations is the application of principles to a certain condition of facts. There comes in the art. Where different judges differ, it isn't in the science of the law, it is in the art connected with that science.

Now I am wandering a little. However, I was trying to show that pioneer lawyers were forced to do their own reasoning, to rely upon their own intellectual powers. Such, I understand, was the school in which Lincoln graduated; such the school to a very great extent in which Black and Carpenter graduated, and such, I am happy to say, was the school in which the Honorable District Judge of this State graduated. (Applause.) And he has shown today in the fine address which he has read, that he had good training in that school, and that he early learned to do his own thinking and to arrive at sound conclusions. I know all about him. I knew him before he was a lawyer. I knew him while he was studying his profession. I knew also that there were very few books that he could command at that time. I think it is a good thing. I would say that a lawyer, a young man, should ever be permitted to see a report until he has practiced at the bar for at least 6 or 7 years. Then he would learn to do his own thinking and reason from the principles laid down in the fundamental works upon the science of law. I have spent too much time upon that point however.

The pioneer lawyer as I knew him had a strong sense of humor about him. He had a strong sense of the ludicrous about him. Surrounding circumstances contributed a great deal to the development of that sense in him. In early days there was no such thing as conventional usages. Every fellow had his own fashion and followed his own will. I remember a little incident connected with what I have just stated. When James McNaught, whom you all know, and who subsequently became attorney for one of the largest railroad corporations in the country, the Northern Pacific Railroad Company, when he first came to this territory, he was inclined to be a little "dudish" in his dress. The first place he landed was at Port Townsend. He had a stove-pipe hat and he had it on his head. Let me say that in those times nobody had character enough except a show man or a minister to wear a stove-pipe hat. McNaught with a swallow tail coat, which was no doubt a reminiscent revelation to the inhabitants of that section, with his stove-

pipe hat on his head,—he was near sighted, and his spectacles across his nose—in this condition he went out to view the town, and as is customary with people whose sight is thus affected, he always looked upward, and he was looking upward in Port Townsend as though he expected to gather a glimpse of the golden wings of a flock of angels hanging over that spiritual town. Well, everybody noticed it. He was the observed of all observers. The next time the paper at Port Townsend came out it was with the heading "Ecce Homo," "Behold the Man," and gave a ludicrous description of that young attorney and his resplendent ability, notwithstanding his dude hat. Everybody read it. It was a fine introduction.

When he came to Seattle the boys ran out to him thinking him to be the advance agent of some show, and said to him, "Mr., when is your show going to be along?" "What is it," "Has it got any animals in it or not?" After that Mr. McNaught relapsed back into the barbarous habits that existed on the Sound at that time. There was more freedom between the court and the bar at that time than at the present time, more sociability. Now the Court comes in at a certain time from his back room connected with the court house, where he has disappeared, and shuts himself up until the bailiff announces his coming, when, I am speaking now of Seattle, everybody arises and gently bows and the judge takes his seat and is prepared with his judicial thunder. We had a lawyer at Seattle by the name of Hall. He was the wit of the bar. He possessed two abilities. The ability to utter the most witty expressions, and also the ability, I will say the "absorbing" ability, which was his great weakness. The fact I am about to illustrate now is personal with myself, while I was at Port Townsend, presiding there. It was on the last day of the term when the lawyers were usually all present attending to their records, that being the time that the Court generally signed the final records of the term. After I thought everything was through I asked if any attorney had any other business to occupy my attention, when Mr. Hall told me that he had a motion that he desired to have heard. I told him I would hear it. He made an able and finished argument, as he always could. When he got through the other attorney arose to address the Court. I told him I didn't wish to hear him, I said to Mr. Hall, and there is where the Court put its foot in it, that the same question that he had just so ably argued had already been up before my brother Lewis and he had written an opinion upon the subject which he had submitted to me, and his opinion exactly corresponded or concurred with my opinion. It was a question of statutory construction, and moreover, says I, the same question came before Judge Greene, and

he has rendered an opinion upon the subject, and he agrees with my brother Lewis and myself; now, I says, while I am perfectly willing to give you the benefit of an exception if you desire it, with we three sitting as the Supreme Court, or that mutual admiration society which sits at Olympia, to be honest with you I don't think you will make much by your exception. It seemed to nonplus the man for a moment or two. He dropped his head in meditation. The whole bar was looking at him intently; finally he raised his head slowly and said: "Your Honor, I believe I will take the exception anyhow; the tenure of office is very uncertain in this country." And the boys say that when he got his case heard, I presmue my brother here (Judge Turner) was on the bench in the Supreme Court, they sustained brother Hall's contention.

One or two other instances of brother Hall's wit. I used to have a little to do with politics, but since the lapse of years has taken the color out of my hair I have lost all interest, or considerable interest at least, in that direction. But upon this occasion of which I am about to speak, brother Hall was running for Probate Judge in King county. He was a man of dissipated habits, but they were periodical. He had been sober for some two years, and he was very desirous that I should go with him over King county where I was extensively acquainted, and assure the farmers and the other parties, according to that new classification, that he had indeed reformed; in other words I was to chaperone him in his campaign. I was to make the closing speech, sort of gather up the jeweled words that had been thrown out by the other speakers during the evening, and present them in a concentrated form to the audience. The first night Mr. Hall met the subject he sustained himself with such modesty and diffidence that it disappointed me very much. When he got through he came to me and said: "Judge, how did you like that?" I said, "It won't do at all. You must learn in this election what you ought to have learned before, that upon the Pacific Coast men believe in those who believe in themselves, and if a man has no confidence in himself he need not run for office in King county at least." He said he would do better next time. The next night he did do better. He spoke with some confidence of his ability to discharge the duties of his office. When he got through he again asked me how I liked it. I said, "That is much better, Mr. Hall, but you want something more than that," and I repeated to him the maxim I just stated to you. "Well," he said, "I will suit you tonight." Our next meeting came. There was a large audience and a very attentive one. Hall was called upon. After stating in a general way the duties of Probate Judge. and the fact that all the real estate

and personal property in the county in a period of thirty-three years passed through Probate Court, he then looked out a moment on that audience and asked, "What kind of a man do you want, the office being so important, for Probate Judge of this county? In the first place," he said, "you will demand a fine clerical knowledge, because the Probate Judge has to keep his own records. In the next place, you want a man who is a sound lawyer, one deeply and profoundly read in the general principles of the law, and especially in the principles of the probate law. In the next place you will demand a man of unimpeachable reputation and character. Fellow citizens," he said, "I have given you a description of the duties of the office and the qualities of the man who should fill that office. Look at me, fellow citizens, I am your man." He got every vote in the precinct. I think I had better quit. (Cries, "Go on.")

Well, one more illustration which is personal to myself also, and I have a little delicacy about telling it. As I stated, Mr. Hall had not touched a drop of liquor for two years or over. The election returns were pretty slow in coming in, but finally it became certain that although very close, he was elected. The vote in that precinct saved him. That speech saved him. Well, I went down town to congratulate him on his success but to my surprise and regret I was informed he was down in a saloon of the city, chock full. It was a delicate situation for myself. I determined to get him up to his office. I got a friend to go with me. We went down to the saloon. I persuaded him that a client was waiting for him at his office and finally persuaded him to accompany me there. I turned the key in the door and took him into the inner sanctum and turned the key in that door and put it in my pocket. Then I commenced to make a speech to him. He was standing on the floor looking at me with all soberness and seemed to be an eloquent listener. I told him the consequences of his acts. He had a lovely daughter, a bright, brilliant girl, and I knew that he worshipped her. I appealed to him in the name of that daughter to reform. I exhausted myself and stopped speaking. "Well," he said, "Judge, I have always said that you were one of the finest impromptu speakers that ever was in this state; now if I just had a reporter here to take down this eloquent speech you have just delivered to me it would make you immortal; I think it deserves something. If you will just come down with me to the saloon I will treat to the champagne." I thank you gentlemen for your attention, and ask pardon for detaining you so long.

A DAY IN COURT.

By Edward Pruy, Ellensburg.

Hear ye, Hear ye! the crier calls,
And silence on the court room falls.
The noisy crowds stop in their walk,
And disputants their eager talk.
Equipped for keen, forensic war
The lawyers cluster 'round the bar—
Brevet commanders on the heights
Where reason strives for human rights.
Without red battle's fiery din
Substantial victories they win,
That give to some as lasting fame
As ever crown'd a warrior's name.
The Judge apparel'd fresh and neat,
With grace assumes the highest seat,
Where, with calm mien and dignified,
He hears the causes that are tried.
"What case is next?" he asks the clerk—
A solemn man, always at work—
Who, answering in monotones,
Says: "Sarah Smith against John Jones."
The Judge looks up; to his surprise,
Right in the room, before his eyes,
Erect and tall an old man stands
With cover'd head and folded hands.
He was an early pioneer,
Who never knew or dream'd of fear:
In '52 he crossed the plains,
With slowly moving wagon trains.
His face is toward the open door,
His shadow falls upon the floor;
Nor can his countenance be seen

By court, or laughing crowds between.
Espying this, the Judge grows red
From shaven chin to broad forehead,
And rising up from where he sat
In anger cries "Take off that hat!"
The admonition seems in vain,
"Take off that hat!" he shouts again—
The man remains unheeding still
The mandates of judicial will.
The bailiffs now the culprit seek,
But useless 'tis for them to speak,
For usual sounds he cannot hear,
This autumn leaf, both deaf and sere.
Without a reason for delay
The old man starts and walks away,
Then mounts his steed—the chase is done—
Perspiring bailiffs cease to run.
While smiles o'er many faces flit,
And sounds of laughter linger yet.
The court resumes its wonted course,
Although the judge is warm and hoarse.
Twelve men now answer to their names,
Drawn from a box, like children's games,
Who swear to well and truly try
The issues that before them lie.
And statements of the proofs are made,
By counsel for the jury's aid,
To show why plaintiff should inherit
And why defendant's cause has merit.
Then witnesses the jury face,
To tell their stories of the case,
And there are often heard to say,
That which they meant another way.
And eloquently counsel speak
For woman, desolate and weak,
And picture well the plaintiff's woes
And how defendant's rights arose.
With advocate's consummate art,
They touch the reason and the heart,
By dexterous shifting of the scenes
Where logic lives and humor gleams.
And all the while the Court must hear
The mental fire-works fusing near,

But checks the blaze that flames too bright
For safe and sure judicial light.
The Judge instructs the jury in
The law of who is next of kin,
And how from certain words and acts
They well may find what are the facts.
Then after long deliberation
There comes the grave determination.
Not without doubt, but with great care,
The jury find for the widow fair.
And Sarah smiles in her great joy
And hugs her little orphan boy—
While Jones grows red as a fire brand
And fails to shake his lawyer's hand.

PAPERS READ.

<i>Year.</i>	<i>Writer.</i>	<i>Subject.</i>
1894	John Arthur	President's Address — "Lawyers in Their Relations with the State."
"	R. A. Ballinger	"Our Community Property Laws."
"	Frank H. Graves	"Non-partisan Selection of the Judiciary."
"	Thomas Carroll	"Policy of Redemption Laws."
"	John W. Pratt	"Government of Cities."
"	Charles S. Fogg	"Evils of the Promiscuous Appointment of Receivers."
"	James B. Reavis	"Our Exemption Laws."
"	Frank T. Post	"The Material Man's Lien."
"	Orange Jacobs	"Reminiscences of the Bench and Bar of Washington."
1895	George M. Forster	President's Address.
"	George Turner	"Practice and Procedure in the State of Washington."
"	Charles O. Bates	"Juries and Jury Trials."
"	David E. Baily	"Stare Decisis."
"	C. H. Hanford	"Jurisdiction of American Courts, State and Federal."
"	John J. McGilvra	"The Pioneer Judges and Lawyers of Washington."
1896	Charles S. Fogg	President's Address — "The Law and Lawyer in History."
"	T. N. Allen	"Judicial Legislation."
"	N. T. Caton	"Pioneer Judges and Lawyers."
<i>Year.</i>	<i>Writer.</i>	<i>Subject.</i>
1896	Emmett N. Parker	"Probate Law and Practice in Washington."
"	George Donworth	"Corporations."

1896.....	R. S. Holt	"Contributory Negligence."
"	James Z. Moore	"Landlord and Tenant."
"	Alfred Battle	"Record Notice and Curative Acts."
"	W. T. Dovell	"Bench and Bar."
1897.....	Harold Preston	President's Address.
"	E. B. Leaming	"Philosophy of the Law."
"	W. H. Pritchard	"The Policy and Practical Effect of Usury Laws."
"	Ben Sheeks	"Some Judicial Opinions—A Study."
"	Austin Mires	"Irrigation and Water Rights in the State of Washington."
"	John P. Hoyt	"Reminiscences of the Bench and Bar of Washington."
1898.....	George Turner	President's Address.
"	W. C. Sharpstein	"Annexation of Foreign Territory; Its Constitutionality and Expediency."
"	F. H. Brownell	"Mining Laws in Washington."
"	James Wickersham	"The Constitution of China—A Study in Primitive Law."
"	Henry M. Hoyt	"The Legal Effects of Mortgages and Pledges of Rents and Profits of Real Estate."
"	Frederick Bausman	"Public Policy as an Element of Judicial Construction."
1899.....	Theodore L. Stiles	President's Address—"Legislative Encroachments Upon Private Right."
"	James G. McClinton	"Reform in Criminal Procedure."
"	Byron Millett	"Fourteenth Amendment to the United States Constitution."
"	George H. Walker	"What Shall be Done About the Trusts?"
"	E. F. Blaine	"Decennial of Our State Constitution."
<i>Year.</i>	<i>Writer</i>	<i>Subject.</i>
1899.....	Samuel R. Stern	"The Law and the Laborer."
1900.....	George Donworth	President's Address—"The Passing of Precedent."
"	Will H. Thompson	"The Status of Our Newly Acquired Territory."
"	Herbert S. Griggs	"Admiralty Practice."

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- 1900..... Charles E. Shepard "Limitations on Municipal Indebtedness."
 "..... C. W. Hodgdon..... "Government Ownership of Railroads."
 "..... J. B. Davidson "Needed Reforms in the Laws of Marriage and Divorce."
 "..... Thomas B. Hardin "How Should United States Senators Be Elected?"
- 1901..... Samuel R. Stern..... President's Address.
 "..... A. G. Kellam .. "The Trust Fund Theory of Corporation Assets."
 "..... T. O. Abbott "Advantages of the Torrens System of Conveyancing."
 "..... E. G. Kreider..... "Law Reporting."
 "..... Joseph Shippen..... "The Insular Questions and Their Solution by the Supreme Court of the United States."
- 1902..... Austin Mires President's Address.
 "..... Edward Whitson "The Course of Legislation in Washington."
 "..... Will G. Graves "Stability of Legal Principles—A Thing of the Past."
 "..... Arthur Remington "Railway and Transportation Commissions."
 "..... C. H. Hanford "Conflicting Decisions of Federal and State Courts."
 "..... Orange Jacobs..... "Reminiscences of Bench and Bar."
 "..... Edward Pruyn Poem—"A Day in Court."

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Property of State
Bar of Calif.

DISCARDED BY
NEW YORK COUNTY
LAWYERS' ASSOCIATION

PROCEEDINGS

OF THE

Washington State Bar Association



FIFTEENTH ANNUAL SESSION

Held at the City of Tacoma, August 25th, 26th and 27th, 1903.

OLYMPIA, WASH.
BLANKENSHIP & SATTERLEE.
1903.

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**The Sixteenth Annual Session
of the
Washington State Bar Association
will be held in the
City of Seattle.
(Date not yet determined.)**

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C. H. Neal.	Sprague
C. S. Shank,	Seattle
Edward Pruyn,	Ellensburg
Charles A. Murray,	Spokane
Charles P. Lund,	Spokane

OBITUARIES.

Charles E. Shepard,	Seattle
Arthur Remington,	Tacoma
F. M. Dudley,	Spokane
John E. Humphries,	Seattle

ROLL OF MEMBERS.

Abbott, T. O.,	Tacoma
Albertson, R. B.,	Seattle
Allen, W. L.,	Spokane
Arthur, John	Seattle
Ballinger, R. A.,	Seattle
Barnhart, Richard M.,	Spokane
Bates, Charles O.,	Tacoma
Battle, Alfred,	Seattle
Bausman, Frederick,	Seattle
Bedford, Charles,	Tacoma
Belt, George W.,	Spokane
Blackburn, H. H.,	Puyallup
Blaine, E. F.,	Seattle
Bowman, A. C.,	Seattle
Brady, Edward,	Seattle
Brandt, Emil J.,	Seattle
Brents, Thomas H.,	Walla Walla
Bronson, Ira,	Seattle
Brown, L. Frank,	Seattle
Brown, O. P.,	Whatcom
Brownell, F. H.,	Everett
Burke, Thomas,	Seattle
Campbell, F.,	Tacoma
Carroll, Thomas,	Tacoma
Cass, J. P.,	Tacoma
Caton, Nathan T.,	Davenport
Chadwick, S. J.,	Colfax
Christian, Walter,	Tacoma
Claypool, C. E.,	Circle City, Alaska

Clementson, Geo. H.,	.	.	Port Angeles
Clifford, Miles L.,	.	.	Tacoma
Cole, Irving T.,	.	.	Seattle
Condon, John T.,	.	.	Seattle
Cross, J. C.,	.	.	Aberdeen
Crow, Herman D.,	.	.	Spokane
Crowley, D. J.,	.	.	Tacoma
Davidson, John B.,	.	.	Ellensburg
Davis, Peter V.,	.	.	Seattle
Dawson, William Sherman,	.	.	Spokane
Deming, A. W.,	.	.	Summit
De Steiguer, George E.,	.	.	Seattle
Doherty, L. A.,	.	.	Wallace, Idaho
Donworth, George,	.	.	Seattle
Douglas, S.,	.	.	Colville
Dudley, F. M.,	.	.	Spokane
Edsen, Eduard P.,	.	.	Seattle
Emmons, R. W.,	.	.	Seattle
Fogg, Charles S.,	.	.	Tacoma
Fogg, George W.,	.	.	Tacoma
Forster, George M.,	.	.	Spokane
Fullerton, Mark A.,	.	.	Colfax
Gay, Wilson R.,	.	.	Seattle
Gilbert, W. S.,	.	.	Spokane
Gilliam, Mitchell.	.	.	Seattle
Glass, Chester	.	.	Spokane
Gordon, Merritt J.,	.	.	Spokane
Gose, M. F.,	.	.	Pomeroy
Gowan, Richard,	.	.	Seattle
Graves, Carroll B.,	.	.	Ellensburg
Graves, W. G.,	.	.	Spokane
Greene, Roger S.,	.	.	Seattle
Griffiths, Austin E.,	.	.	Seattle
Griggs, Herbert S.,	.	.	Tacoma
Grosscup, B. S.,	.	.	Tacoma
Guerin, Reynolds F.,	.	.	Seattle
Hadley, Hiram E.,	.	.	Olympia

Hanford, C. H.,	Seattle
Happy, Cyrus,	Spokane
Hardin, Thomas B.,	Seattle
Harris, James M.,	Tacoma
Harris, W. H.,	Tacoma
Hartman, John P., jr.,	Seattle
Hartson, Millard T.,	Spokane
Hartson, D. H.,	Ritzville
Hastings, H. H. A.,	Seattle
Hess, John B.,	Spokane
Heuston, B. F.,	Tacoma
Heyburn, W. B.,	Wallace, Idaho
Heyburn, E. M.	Spokane
Higgins, Thomas B.,	Spokane
Hindman, W. W.,	Spokane
Hinkle, J. D.,	Spokane
Hodgdon, C. W.,	Hoquiam
Holland, George F.,	Spokane
Holloway, C. K.,	Spokane
Holt, R. S.,	Tacoma
Hovey, C. R.,	Ellensburg
Howe, James B.,	Seattle
Hoyt, John P.,	Seattle
Hoyt, Henry M.,	Spokane
Hoyt, Charles W.,	Spokane
Hudson, R. G.,	Tacoma
Hughes, E. C.	Seattle
Humphries, John E.,	Seattle
Huneke, William A.,	Spokane
Huntley, Herbert B.,	Seattle
Jacobs, Orange,	Seattle
Jacobs, A. L.,	Seattle
Jones, Richard S.,	Seattle
Kauffman, Ralph,	Ellensburg
Kellam, A. G.,	Spokane
Kennan, H. L.,	Spokane

Kershaw, T. R.,	.	.	.	Whatcom
Knapp, Lyman E.,	.	.	.	Seattle
Kreider, E. G.,	.	.	.	Olympia
Langford, F. E.,	.	.	.	Spokane
Leehey, Maurice,	.	.	.	Seattle
Lehman, Robert B.,	.	.	.	Tacoma
Leo, John,	.	.	.	Tacoma
Levy, Aubrey,	.	.	.	Seattle
Lueders, Henry W.,	.	.	.	Tacoma
Lewis, James Hamilton	.	.	.	Chicago, Ill.
Linn, O. V.,	.	.	.	Olympia
Lindsley, J. B.,	.	.	.	Spokane
Lund, Charles P.,	.	.	.	Spokane
Lung, Henry W.,	.	.	.	Seattle
Mattison, Thomas,	.	.	.	Tacoma
McBride, John R.,	.	.	.	Spokane
McClinton, James G.,	.	.	.	Port Angeles
McCrosky, R. L.,	.	.	.	Colfax
Macdonald, Ernest C.,	.	.	.	Spokane
McGilvra, John J.,	.	.	.	Seattle
McGilvra, O. C.,	.	.	.	Seattle
Mendenhall, Mark F.,	.	.	.	Spokane
Merritt, H. D.,	.	.	.	Spokane
Millett, Byron,	.	.	.	Olympia
Million, E. C.,	.	.	.	Mt. Vernon
Miller, Eugene,	.	.	.	Spokane
Miller, Fred,	.	.	.	Spokane
Mires, Austin,	.	.	.	Ellensburg
Moore, James Z.,	.	.	.	Spokane
Moore, William H.,	.	.	.	Seattle
Mount, Wallace,	.	.	.	Olympia
Munday, Charles F.,	.	.	.	Seattle
Munter, Adolph,	.	.	.	Spokane
Murray, Charles A.,	.	.	.	Spokane
Myers, H. A. P.,	.	.	.	Davenport
Nash, Frank D.,	.	.	.	Tacoma
Neagle, John L.,	.	.	.	Seattle

Neal, C. H.,	Sprague
Nichols, J. W. A.,	Tacoma
Onstine, Burton J.	Spokane
Palmer, E. B.,	Seattle
Parker, Emmett N.,	Tacoma
Parker, James H.,	Hoquiam
Parsons, Galusha,	Tacoma
Peacock, John A.,	Spokane
Peters, William A.,	Seattle
Pickrell, J. N.,	Colfax
Piles, S. H.,	Seattle
Porter, Nathan S.,	Olympia
Post, Frank T.,	Spokane
Prather, L. H.,	Spokane
Preston, Harold,	Seattle
Pruyn, Edward,	Ellensburg
Quinn, Patrick F.,	Spokane
Reavis, James B.,	Tacoma
Reid, George T.,	Tacoma
Reinhart, C. S.,	Olympia
Remington, Arthur,	Tacoma
Richardson, William E.,	Spokane
Roberts, John W.,	Seattle
Robinson, J. W.,	Olympia
Rockwell, T. D.,	Spokane
Ronald, J. T.,	Seattle
Root, Milo A.,	Seattle
Ross, E. W.,	Olympia
Rowell, Fred. Rice,	Seattle
Rudkin, Frank H.,	North Yakima
Saunders, Wirt W.,	Spokane
Scott, W. D.,	Spokane
Shackleford, John A.,	Tacoma
Shaffer, C. Will,	Olympia
Shank, Corwin S.,	Seattle
Sharpstein, W. C.,	San Francisco
Sheeks, Ben.,	Aberdeen

Shepard, Chas. E.,	.	.	.	Seattle
Shepard, Thomas R.,	.	.	.	Seattle
Shine, P. C.,	.	.	.	Spokane
Shippen, Joseph,	.	.	.	Seattle
Slauson, Howard B.,	.	.	.	Seattle
Slemmons, A. L.,	.	.	.	Ellensburg
Smith, Eben,	.	.	.	Seattle
Smith, Del Cary,	.	.	.	Spokane
Smith, Winfield R.,	.	.	.	Seattle
Snell, Bertha M.,	.	.	.	Tacoma
Snell, Marshall K.,	.	.	.	Tacoma
Snell, W. H.,	.	.	.	Tacoma
Southard, Frank S.,	.	.	.	Seattle
Squire, Watson C.,	.	.	.	Seattle
Staser, C.,	.	.	.	Ritzville
Stern, Samuel R.,	.	.	.	Spokane
Stewart, James,	.	.	.	Port Angeles
Stiles, T. L.,	.	.	.	Tacoma
Stoll, W. T.,	.	.	.	Spokane
Struve, Henry G.,	.	.	.	Seattle
Tallman, Boyd J.,	.	.	.	Seattle
Taylor, E. Win.,	.	.	.	Spokane
Teats, Govnor,	.	.	.	Tacoma
Thayer, W. J.,	.	.	.	Spokane
Thompson, Will H.,	.	.	.	Seattle
Tolman, Warren W.,	.	.	.	Spokane
Town, Ira A.,	.	.	.	Tacoma
Townsend, W. F.	.	.	.	Spokane
Turner, George,	.	.	.	Spokane
Voorhees, C. S.,	.	.	.	Spokane
Voorhees, Reese H.,	.	.	.	Spokane
Wakefield, W. J. C.,	.	.	.	Spokane
Walker, George H.,	.	.	.	Seattle
Wall, J. P.,	.	.	.	Ballard
Warburton, S.,	.	.	.	Tacoma
Warren, W. T.,	.	.	.	Wilbur
Warner, Clyde V.,	.	.	.	Ellensburg

Wagh, J. C.,	Mt. Vernon
Weir, Allen,	Olympia
Wells, S. A.,	Spokane
Welsh, W. J.,	Roslyn
Wheeler, L. H.,	Seattle
Whited, Kirk,	Wenatchee
Whitson, Edward,	North Yakima
Wickersham, James,	Circle City, Alaska
Wiley, Charles L.,	Seattle
Wilhelm, Honor L.,	Seattle
Williams, James A.,	Spokane
Williams, Louis,	Seattle
Winfree, W. H.,	Spokane
Zent, W. W.,	Ritzville

MEMBERS IN ATTENDANCE
ON THE
FIFTEENTH ANNUAL SESSION

BALLARD.—Wall, J. P.

DAVENPORT.—Caton, N. T.

ELLENSBURG.

Mires, Austin

Warner, Clyde V.

EVERETT.—Brownell, F. H.

NORTH YAKIMA.—Whitson, Edward.

OLYMPIA.

Kreider, Eugene G.

Linn, Oliver V.

POMEROY.—Gose, M. F.

PUYALLUP.—Blackburn, H. H.

Porter, Nathan S.

Shaffer, C. Will

SEATTLE.

Ballinger, R. A.

Battle, Alfred

Bronson, Ira

Brown, L. Frank

Burke, Thomas

Condon, John T.

Emmons, R. W.

Gilliam, Mitchell

Gowan, Richard

Hanford, C. H.

Hartman, John P.

Hughes, E. C.

Jacobs, Orange

Levy, Aubrey

Lung, Henry W.

McGilvra, J. J.

Piles, Samuel H.

Preston, Harold

Ronald, J. T.

Root, M. A.

Rowell, Fred Rice

Shippen, Joseph

Smith, Winfield

Squire, Watson C.

Wiley, Charles L.

SPOKANE.—Macdonald, Ernest C.

TACOMA.

Abbott, T. O.

Bates, Charles O.

Bedford, Charles

Cass, J. P.

Clifford, M. L.

Crowley, D. J.

Fogg, George W.

Griffin, C. E.

Griggs, Herbert S.

Grosscup, B. S.

Harris, James M.

Harris, W. H.

Heuston, B. F.

Holt, R. S.

Hudson, R. G.

Leo, John

Lueders, Henry W.

Mattison, Thomas

Nash, Frank D.

Parker, Emmett N.

Reid, George T.

Shackleford, John A.

Snell, Bertha M.

Snell, W. H.

Stiles, T. L.

Teats, Govnor

Town, Ira A.

Warburton, S.

NEW MEMBERS ELECTED 1903.

BALLARD.—Wall, J. P.

OLYMPIA.—Shaffer, C. Will.

PORT ANGELES.

Clementson, Geo. H.

Stewart, James

SEATTLE.

Brown, L. Frank

Palmer, E. B.

Emmons, R. W.

Squire, Watson C.

Levy, Aubrey

Wiley, Charles L.

SPOKANE.—Macdonald, Ernest C.

TACOMA.

Bedford, Chas.

Leo, John

Clifford, Miles L.

Nash, Frank D.

Griffin, C. E.

Parker, Emmett N.

Grosscup, B. S.

Snell, W. H.

Heuston, B. F.

Teats, Govnor

—

PROCEEDINGS.

TACOMA, Aug. 25, 1903.

The Washington State Bar Association met in annual session in the City of Tacoma, in the United States Court Room, and was called to order by the President at 2 o'clock P. M.

There were present R. G. Hudson, President; Edward Whitson, Third Vice-president; Nathan S. Porter, Treasurer; Eugene G. Kreider, Secretary, and a quorum of members.

The President: The first thing in order will be the reading of the minutes of the last session.

Mr. Porter: Inasmuch as the proceedings have been printed and pretty generally circulated, I move the reading of the minutes be dispensed with. Whereupon the motion was put to vote and motion carried.

Opening address by Mr. R. G. Hudson, President. (See appendix.)

The President: The next will be the report of the Executive Committee.

Report read by the Secretary as follows:

REPORT OF EXECUTIVE COMMITTEE.

The Executive Committee of the Washington State Bar Association met in Tacoma at 10 o'clock A. M., at the office of the president, R. G. Hudson. There were present President Hudson, Secretary Kreider, and Vice-President Peters.

The program for the 15th annual session to be held August 25-27, 1903, in the City of Tacoma, was made up as follows:

President's address—R. G. Hudson, Tacoma.

Life and Character of John B. Allen—Thomas Burke, Seattle.

Street Assessments—F. D. Nash, Tacoma.

Some Pioneer Judges I Have Known—N. T. Caton, Davenport.

A Theory of Legal Obligation—J. T. Condon, Seattle.

The Taxation of Franchises—J. B. Reavis, Tacoma.

The Use and Abuse of the Labor Union—L. Frank Brown, of Seattle.

The Secretary was instructed to select lawyers in the different cities of the state, who should be requested to solicit new members in their respective localities.

On vote of the committee, the application of L. Frank Brown, of Seattle, for membership was considered, and he was duly elected to membership in the association.

There being no further business, the committee adjourned.

E. G. KREIDER, Secretary.

The President: What will we do with the report, gentlemen? There being no objection the report will be received and filed.

The President: The next thing in order will be the Secretary's report.

Report read to the Association as follows:

SECRETARY'S ANNUAL REPORT.

OLYMPIA, Wash., Aug. 1, 1903.

To the President and Members of the Washington State Bar Association:

Gentlemen: I have the honor to submit my annual report as Secretary for the year ending August 1, 1903, as follows:

Number of members as per last report.....	209	
Number joined since last report.....	9	218
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Number dropped for non-payment of dues.....	1	
Number removed from state.....	2	
Number died.....	3	6
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Present membership.....		212
Cash received from 11 admission fees.....	\$ 55	
Cash received from dues.....	109	
<hr/>		
Cash paid treasurer.....		\$164

Respectfully submitted,

E. G. KREIDER, Secretary.

OLYMPIA, Wash., August 25, 1903.

To the Washington State Bar Association:

Gentlemen: I have the honor to submit for your consideration my annual report as follows:

The President: This report will be received and placed on file if there are no objections.

Mr. Hudson: Next is the report of the Treasurer.

Treasurer's report read as follows:

RECEIPTS.

1902.	
Aug. 5, To balance as per last report.....	326 99
Aug. 13, To received from E. G. Kreider, Sec.....	40 00
1903.	
Feb. 1, To received from E. G. Kreider, Sec.....	23 00
May 4, To received from E. G. Kreider, Sec.....	21 00
Aug. 1, To received from E. G. Kreider, Sec.....	80 00
	<hr/>
	\$ 490 99

EXPENDITURES.

1902.	
Aug. 13, By paid warrant No. 25.....	\$ 75 00
Oct. 6, By paid warrant No. 26.....	159 95
1903.	
May 27, By paid warrant No. 27.....	13 00
	<hr/>
	\$ 248 35
Aug. 25, Balance cash on hand.....	\$ 242 64

Respectfully submitted

NATHAN S. PORTER, Treasurer.

The report was received and placed on file.

The President: The next matter on the program is an address by Hon. Thomas Burke, of Seattle.

The Hon. Thomas Burke then delivered an extemporaneous address upon "The Life and Character of John B. Allen." (See appendix.)

President: The next is a list of applicants to be voted on for membership.

The applications of the following named attorneys were submitted to the Association for action: C. Will Shaffer, of Olympia; James Stewart and George H. Clementson, of Port Angeles; Watson C. Squire, of Seattle; C. E. Griffin, Frank

D. Nash, Govnor Teats, M. L. Clifford, Charles Bedford and John Leo, of Tacoma.

Mr. Cass: I move that the rules be suspended and that the Secretary cast the ballot of the Association for the names just read as members of the Association.

Motion carried and the applicants declared duly elected.

Recess taken until 10 o'clock A. M., Wednesday, August 26th.

SECOND DAY.

MORNING SESSION.

Wednesday, Aug. 26, 1903.

President: The first thing will be the report of the Committee on Jurisprudence and Law Reform.

Report read as follows:

COMMITTEE REPORT.

Mr. President and Members of the Washington State Bar Association.

Gentlemen: On behalf of your Committee on Jurisprudence and Law Reform, I beg to report that as usual geographical, professional and financial considerations have made a meeting of the members of the committee impossible. We have exchanged ideas, however, largely based upon the unfortunate personal experiences of the various members of the committee in their law practice; and as the natural result we beg to report that we are all convinced, as one of the members puts it, "That the laws of this state, both the statute and the case law, are as much the result of patch work as is a crazy quilt."

Owing to a feeling of delicacy for the members of the Supreme Court who are our personal friends, and from whom we are obliged to ask a considerate and oftentimes a friendly hearing, we do not care to specify the reforms necessary in the case law except to remind you that an examination of the decisions of our Supreme Court with reference to the manner in which statutes may be legally amended will convince the most skeptical that our supreme court are themselves determined to reform and systemize the case law even though they turn somersaults and break their backs in doing it.

As to the statute law, the committee are of the unanimous opinion that no great good can be accomplished except through a complete codification of the laws. This would be a work of stupendous magnitude and would require more time to even outline than any one of the humble bread winners who are members of the committee could

devote. Some suggestions, however, have been received from members of the committee and other members of the association and I shall give those to you in practically their original packages and unadulterated doses, and trust they may result in enough disturbance to provoke some discussion.

First. We renew the recommendations of the committee for 1902 for an amendment to Section 3, Article 4, of the State Constitution so as to provide for the separate election of Supreme Court Judges and for the term of eight years (with the right of the Legislature to enlarge that term). The terms of the members of the Supreme Bench to be so fixed that the elections shall held every four years.

Second. We renew the recommendations of the committee for 1902 for an amendment to Section 5, of Article 4, of the State Constitution providing for the election of Superior Court Judges to be held throughout the State at the same time that the election for Judges of the Supreme Court is held and for terms of four years, (with the right of the Legislature to enlarge that term.)

Third. We recommend such changes in the probate law as will permit the closing of an estate in less than one year, and such further changes as will materially reduce the expenses connected with the handling of small estates. We regret that we have not prepared a bill or bills that would accomplish the purposes suggested, but we think this matter should be approved of by the association and referred to some competent member or members to prepare the necessary bills and have them indorsed at the next session of the Legislature.

Fourth. We recommend the amendment of the probate law so as to enlarge the powers and more accurately define the duties of a partnership administrator and partnership administration, especially as to real estate.

Fifth. We recommend a change in corporation laws so as to permit domestic corporations to acquire, vote and dispose of stock in other corporations as fully as private individuals may under the laws; so that this State may be in line on that subject with the progressive states throughout the east. We believe that all possible safeguards should be maintained to prevent the oppression of the people by vicious trusts or by monopolies, but we are satisfied that that can be done by general laws applicable to all classes of persons and corporations; and that, conceding that that protection is to be given, the tendency of today is to give every facility to combination. We believe that our laws should not be so insular, so vicious or so adverse to the progressive tendency of the age that our home capital should seek the protection and powers given them by incorporating under foreign laws rather than under the laws of the State.

Sixth. We recommend the passage of a law that will enable the State officials to wipe off the books of the State the accumulated fines and penalties covering the license fees of insolvent and defunct corporations which have not sufficient assets to justify even a law clerk in taking the necessary steps to dissolve it. We believe the State affairs ought to be administered in this respect on the same plan that a business concern would be administered and that some means should be adopted to charge off the worthless assets.

I trust that it is not necessary to state that the recommendations contained in this report do not express the individual sentiments of any one member or all members. They are suggestions which have come to me from various members of the committee or of the association, and I present them to you with the hope that they may give rise to some discussion, and with the further hope that some steps may be taken to crystalize whatever is the general sentiment of the association upon these subjects by the passage of necessary laws.

H. S. GRIGGS,
Chairman of Committee.

President: Gentlemen, if there are any suggestions to put in here, I would like to hear it discussed if any of the members feel like doing so. This report is supposed to be open for discussion. The first is: Election of supreme court judges, etc.; the second is with reference to the superior judges, etc.

Mr. Town: That recommendation seems to have come before this Association the second time this year, and for the purpose of getting an expression upon it, I move you the first recommendation be not indorsed by the Association.

President: Any second to that motion?

Mr. Bedford: Mr. President, I second it for the purpose of getting it before the Association.

President: The motion is seconded in a left-hand way, so we would like to hear from Mr. Town in support of the motion.

Mr. Town: Mr. President, I think I prefer to hear from somebody else first against it; what particular reasons there are for the recommendation. The principal suggestion I would make at this time is: I, for one, have sufficient confidence in the wisdom and integrity of the people to submit the question of the judiciary, as other questions, to the people

at a general election, and take chances on the proposition. It seems to me we have had no particular grievance before us in regard to the elections as they have been carried on, for a young state, and the work of our supreme court and our superior courts have been, of course, largely a pioneer work, and on the whole I think the courts have been doing very well, and I think we have a representative court, and thinking that way I see no reason why we shall expect to improve it by this new method of electing judges. It strikes me the better proposition would be for this Association to indorse the recommendation and perhaps take active steps, so that the people may express themselves on any and every candidate without first being forestalled by machine politics. I think that would come nearer reaching the desired end than the method proposed by this suggestion.

Mr. Stiles: Mr. President, I would move that a motion to indorse the recommendation be made a substitute for the first motion. Last year this matter was discussed and some gentlemen from Spokane came to the Association meeting strongly imbued with the idea. Their proposition was to nominate all the judges by petition, requiring one thousand electors for a judge of the supreme bench and two hundred and fifty for a candidate for the superior bench. There was an opposition to the proposition and they sort of compromised with an arrangement by which the Association could recommend that there be a separate election, if they deemed it advisable, to keep the nomination from the political parties, but not to provide for a separate election. Now we all know, I think, it is a common idea that the nomination of judges, both supreme and superior, is always of last consideration in a convention, and we think it is most important, and we do not like the idea of having nominations of that kind subject to common politics. This matter went to the legislature last winter, but what occurred there I am not familiar with.

Mr. York: Mr. President, regarding the proposition in the

last legislature, the bill was called before the committee I think one session, but the matter was not gone into very fully and met disapproval by a number of the committee, and my recollection is to some extent it was laid aside; but it seemed quite a number of the leading members of the committee were in some measure opposed to the measure. The result was the actions desired were not taken.

Mr. Caton: Mr. Chairman, for a great many years I have favored this idea; it is well known to every member of this Association that so far as the legal practitioner is concerned he cares nothing about politics; this is not so certain where we are dependent upon filling the bench by machine politics. Generally the nomination of judges takes place after all the other business has been concluded, and the result is the attention is not paid by those composing the various county delegates in the selection of a man by them as their candidate for judge. And again, when one is nominated, the first thing of that particular party is to stand by their nominee, and I have always favored, if it be possible, to remove the judge-ships, so to speak, as far from partisan politics as possible.

Mr. Cushman: I would oppose the adoption of the recommendation in its present form, the recommendation of authority to lengthen the term of the supreme judges; it is my idea that the executive, judiciary and legislative branches of a government be kept separate, and if there is any officer whose term should be fixed in the constitution, it is the judges. I would not favor it in its present form.

Mr. Condon: Mr. Chairman, I have in mind one or more illustrations in regard to this matter: A gentleman came to the state convention, and found himself as a result of political deals a candidate for the supreme bench when nominations for that position was reached; he did not want to be a candidate for it, but came there to be a candidate for lieutenant-governor, and found himself a candidate for the supreme bench, although he may have been eminently qualified for it.

I have in mind also in King county, when a man goes into a convention as a candidate for the superior bench, he has to get in the midst of the convention; that is our experience in King county. They have certain friends to manipulate things for them, and we find that friends of the court are arrayed for and against each other. Now, if it is equally true as to the state, it would seem a very strong argument in favor of taking the judgeship out of politics.

Mr. Porter: Mr. President, In regard to this matter of judges being nominated by political parties, Judge Caton has certainly exemplified it. Here is the question: Now, certain political rings, and there will always be such in towns, and if they can secure a majority so as to manipulate the primary meetings and get their particular friends into office, it makes no difference to them. Now, then, let us suppose a convention meets and they have a regular ticket put up before the convention. Now a candidate or a man on the opposite ticket may be eminently fit for the place, and the other not fitted for it at all; their friend will be put up and they will say, I am not going to scratch my ticket; I will vote my ticket. I think if there is anything should be removed from politics, it certainly should be the judges upon the bench, and I think they should be removed entirely from politics. We well know that when a man gets nominated on a party ticket, that party is going to stay by him, whether he is qualified or not. Let us keep the judiciary entirely from politics and let it be so understood that politics enter into it in no way or manner, and when that is done we will have those men who are versed in the law and will do justice. There isn't any doubt but what the legislature is manipulated through politics, and if the legislature is allowed to suggest, or extend the terms of the judges, it is questionable if they would not bring them into politics. I think it would probably aid in this matter not to permit the legislature to handle it at all. This proposition of removing the judiciary from political parties, I think, is a step in the right direction.

Mr. Town: Mr. Charman, I, of course, know this Association is very much opposed to carrying the motion as made. I was not at the meeting of the Association last year, hence know nothing about the argument made in favor of this proposition at that time, but so far I am ready to say I have heard no argument this morning convincing upon it. I do not understand the resolution is one that is to take the election of the judiciary from politics; it is simply that a different political mode, or different kind be provided for the election. I have never seen yet when opportunity offered for a man to get an office in this state, whether county or district, but what it savored more or less of politics. The fact that a judge will be elected when the governor is not is not removing it from politics. A Democratic candidate has as good a right to aspire for the position as a Republican, and I don't know that by putting a man on the bench he is neither; hence his political affiliations and his political friends push him to the fullest extent. Of course he will not be subject, perhaps, to this sort of political pot that gets boiling without any consideration of the people of the convention—that, of course, is to be despised everywhere—but it seems to me we ought to purify the conventions. We ought to commence the other way to purify the convention, or something of that kind. The suggestion made by some one in regard to putting in incompetent men, etc., it seems to me, is of no force. You take our own history here, that is of our country, the only political decision we have heard about recently was the decision of our highest court of the land, and that is made up by appointment, in regard to the constitution, I believe in regard to its following the flag, or the rights of our acquired possessions. It seems to me there isn't sufficient reason for taking this out of the regular line of elections and creating a new line.

The substitute amendment to the effect that the Association indorse the recommendation of the committee in regard

to the election of supreme and superior court judges being put to vote, was declared carried.

Mr. Cushman: I would support Judge Town's position for one reason: By the adoption of the resolution originally proposed we tacitly admit that everything is going to suffer, and that the political conventions are so arranged we cannot get good men, and we have got to save something and therefore will try and save the judges.

On motion of Mr. Cushman the recommendation of the committee, respecting the proposed power of the legislature in the matter of lengthening terms of judges, was stricken out.

President: There are a number of other recommendations here, and I think perhaps we had better take them up later, and go ahead with the papers for the present. If there is no objection I will take this course. We have a paper by F. D. Nash; subject, "Street Assessments."

Paper read by F. D. Nash. (See appendix.)

President: Gentlemen, this paper is open for discussion. If there are no remarks, the next thing in order will be the report of the Committee on Judicial Administration and Remedial Procedure. I think, if agreeable to the meeting, we will have the next paper in the forenoon. If there is no objection we will have Mr. Condon's paper; subject, "A Theory of Legal Obligation."

Paper read by John T. Condon. (See appendix.)

President: Are there any remarks on this subject? We will now take up the report of the Committee on Judicial Administration and Remedial Procedure.

Report read by the Secretary as follows:

To the Honorable President and Members of the Washington State Bar Association:

Gentlemen: On behalf of your Committee on Judicial Administration and Remedial Procedure, the writer, as the designated chairman of that committee, herewith submits the following. The members of your committee reside at places in the state remote from each other, and the duty of preparing a report was neglected by the writer until it

was too late to correspond with other members of the committee and procure their views by return mail, to be embodied in a report. I have, therefore, prepared this as a personal statement of the writer and have forwarded it to members of the committee, asking them severally to concur or duly dissent and add any suggestions or recommendations which may occur to them as proper to make at this time.

The scope of the subject matter referred to this committee seems to relate to remedial procedure or the methods of judicial administration. Our state is still young and our procedure may not in some particulars be of the most satisfactory character. But, judging from expressions which the writer has frequently heard from members of the bar throughout the State, it would seem that the consensus of opinion may favor established methods which are well understood by both bench and bar. It seems to be a prevailing sentiment that methods which are well established may be preferable to the interruption which would follow from sudden or radical changes. It does not follow that the members of the bar of this State are not progressive men, or that they do not approve keeping abreast with the age, and with the trend of experience and events. But the force of precedent and long-used methods is so much revered by the legal profession that proposed departure therefrom is generally regarded with conservatism. Doubtless each member of the bar could suggest changes which to him seem desirable, while others would find objections thereto. It is true this should not prevent intelligent efforts from time to time to effect such modifications as may clearly appear to be in the interest of both the bar and litigants; but at this time the writer, as one member of the committee, has no recommendations to make.

Respectfully submitted.

HIRAM E. HADLEY,

Chairman of Committee on Judicial Administration and Remedial Procedure.

Hon. H. E. Hadley, Chairman.

Dear Sir: I take pleasure in sending you my entire concurrence in the report you propose as per copy received.

Yours very truly,

FRANK ALLYN.

I concur in the foregoing report, or the views of Judge Hadley. It seems to me that certainty and settled procedure are of very great value, not only to the practitioner, but to the public at large. Beyond question the greatest evil today in connection with our jurisprudence are the unnecessary and continual changes made in the laws. The uncertainty introduced into the laws of the state every two years is

a source of some of the heaviest losses and greatest annoyances which the people of the state have to contend with in their business affairs.

THOMAS B. HARDIN,
Member of the Committee.

As a member of the Committee on Judicial Administration and Remedial Procedure, I quite agree with the spirit of the report of the chairman.

We need "established methods which are well understood by both bench and bar."

If any legislation is had on the subject referred to this committee, it should be for the purpose of making definite and certain that which has been made indefinite and uncertain by confusing and conflicting decisions of the Supreme Court.

It seems to me that something is needed in this direction. I have in mind now, Section 5029, Ballinger's Code, in regard to finding of facts and conclusions of law in cases tried by the court without a jury. The statute seems plain enough, but it has been construed so many times by the Supreme Court, and so differently that no one can have any idea what that statute really means in any given case.

What is the law of procedure and judicial administration in case of appeal in an equity cause? The Supreme Court has said findings of fact by the lower court will be treated like the verdict of a jury; later it held in two very important cases that it should be tried de novo and all the evidence reviewed, and in those cases the decision of the lower court was revised where the evidence, while conflicting greatly, abundantly sustained the decision of the trial court.

After we had gotten settled down to the supposition that a trial de novo meant a new trial in the Supreme Court, it has in a very recent case been decided that where the evidence is conflicting in an equity cause, the decision of the trial court will not be disturbed.

If the Legislature can lift the law of procedure out of such embarrassing uncertainty, it should be done.

These two subjects are referred to briefly for examples.

Respectrully,

CYRUS HAPPY.

President: This report is open for discussion. What will we do with the report? The report will be received and placed on file, if there is no objection.

President: The next thing in order is the report of the Committee on Legal Education and Admission to the Bar, Chairman J. B. Howe, Seattle.

Judge Stiles: Mr. President, I had notice from Mr. Howe day before yesterday in which he asked me, as a member of the committee, to speak for him; at least I believe there is no other member of the committee here, and, complying with his instructions I thought a little about the matter and wrote out my own grumble, and I will read it.

To the Wasnington State Bar Association:

Your Committee on Legal Education and Admission to the Bar has but little to report at this meeting.

A change has been made in the law governing admission to the bar, however, which deserves to be called to your attention.

The act of 1895, as amended in 1897, provided for an examination of all persons applying for admission to practice law in this State, except such as had already been admitted to practice in the higher courts of other states. No one not a resident of Washington for one year, or intending to become a permanent resident, could be admitted upon examination, nor unless he had studied law for two full years.

Chapter 185 of the acts of 1903 amends the law again, so that graduates of the University of Washington Law Department must be admitted upon their diplomas, without examination, and whether or not they are or intend to be residents of the state.

While this change in the law undoubtedly conduces to the advantage of the University, it may well be doubted whether it greatly advances the cause of legal education among us. About fifteen months is the time given to the school course, or, including vacations, say eighteen months.

This is the same thing that is done in some other states, but the courses in law schools is now generally three years.

The point of real criticism is that the courts now have nothing to say as to who shall practice law. So long as a man holds a diploma he must be admitted, if he asks to be, although he may not live in the State, or intend to live here, and although his diploma may be five, ten or twenty years old.

It was no hardship upon any man to take an examination, and the law was not, it is feared, changed for the purpose of raising the standard of admission, but to subserve other interests.

The same act, by another amendment, does a palpable injustice to those young men who are not fortunate enough to be able to take a law school course. The act of 1897 provided for the payment of a fee of \$20 by each person applying for admission; but the act of 1893

adds this proviso: "Provided, That no fees shall be required to be paid by graduates of the law department of the State University of Washington."

Respectfully submitted,
T.L. STILES.

Tacoma, August 25, 1903.

President: What is the pleasure of the meeting in reference to the report?

Mr. Caton: Mr. President, I was going to say I approve of every single sentence in that report, and I would move you, therefore, that the matter contained in there meet with the approbation of the Association.

Mr. Condon: I think there should be some statement of fact in the report in place of the view of the gentleman making it in this, that in addition to having a diploma. I think that the law contemplated, and that the interpretation is put upon it and is complied with by those making application if they have all other qualifications. Now, as to reason of the passage of the act, while I am the official head of the University of Washington Law School, I had no fear of a subsequent man coming from the law school. It came through the interest of some friends of the school, and friends of the men in last year's graduating class. I did not oppose the passage of this last act, but I did oppose the inserting of the \$20 and I don't know how it got in; when the matter came finally on for passage the original proposition of the admission of graduates of the school was inserted. I think myself it is somewhat unjust. There is, however, good reason for it. This being part of the state, a state institution and subject to investigation by state officials, there is good reason why they should be admitted without examination. The record made by the young men who have taken it has been very satisfactory.

Mr. Whitson: Mr. President, I concur in this report, and believe it should be adopted by this Association. It seems to me there should be no distinction made between a graduate of the school and a student from a law office. The president of that department is thoroughly satisfied that the student is

qualified, then why should not he be required to do exactly the same thing as the other student? Why the distinction between one who studies in an office and the student of the law school? And if the student in the law office has to pay his twenty dollars, I think the law student of the university should also.

Mr. Shippen: Mr. President, this is a matter of considerable importance throughout the state, to the bench and bar, and the report as now presented is rather an informal one, and as our legislature does not meet next year I object to any formal action being taken on this informal report, and unless other gentlemen wish to discuss it here now, I would move you, Mr. President, that we take no formal action at this time, but that the matter be referred to the Committee on Legal Education and Admission to the Bar for further investigation. Carried.

AFTERNOON SESSION.

Wednesday, Aug. 26, 1903.

President: We have a number of applicants for membership, whose names the secretary will read.

The applications for admission of the following attorneys were read: B. S. Grosscup, W. H. Snell, Emmett N. Parker and B. F. Heuston, of Tacoma; Ernest C. Macdonald, of Spokane, and R. W. Emmons, of Seattle.

Mr. Caton: Mr. President, to save time, I would move that the rules be suspended and the Secretary be instructed to cast the vote of the Association for the candidates.

Motion carried and applicants declared duly elected.

President: The next is the report of the Committee on Commercial Law. There being no report the next will be a paper by Hon. John B. Reavis.

Paper read by Mr. Reavis; subject, "The Taxation of Frenches." (See appendix.)

President: This paper is open to discussion, gentlemen.

President: The next will be the report of the Committee on Uniformity of State Laws.

Report read by the Secretary as follows:

To the Honorable President and Members of the Washington State Bar Association:

Gentlemen: Your Committee upon the Uniformity of State Laws begs leave to report as follows: That while it would be a convenient thing no doubt if there could be a uniform system of State laws, yet the benefits to be derived therefrom have, in our judgment, been greatly over-estimated.

In the formation of the Republic there were at least two schools of political thought. Out of these State and Federal governments were evolved. Under the complex system thus established the people of the different states, and who are the people of the United States, have prospered and developed as have no others in the history of the world. Institutions have any influence in directing thought and action it must be concluded that the institutions of this country, however complex, have resulted in benefit.

In state organization there is local pride, which in no manner detracts from national allegiance. So strong a factor has this state pride become that even in this commonwealth we find the native sons of Massachusetts, New York, Michigan and other states forming clubs, and such a course is commendable.

While between the different states there is a rivalry for commercial supremacy and development there is no such diversity of law as one would expect to find.

Frederic J. Stimson, in his work upon American Statute Law, in the introduction, states: That upon examination of the statutes of the various states he found that the bulk of these voluminous laws was, after all, identical in the several states. He found that one main stream of legislation could be traced, occasionally comprehending all the northern, eastern, and northwestern states, more often divided into two main bodies, the one following in its legislation the general model of the State of New York, the other that of the New England States. He found, besides this, another important group, containing the southwestern states, under the general head of Maryland and Virginia; and still a third and smaller group, comprising the gulf states. Besides these three groups, there was one state with laws wholly anomalous

(Louisiana). Furthermore, he found the greatest divergency between the statutes of the different states to be in those matters which were of purely local interest, or special application.

Again, contrary to the general accepted notion, he found that the several states rarely changed their important or substantive law. Practically in every state of this Union, real property or any interest therein can only be conveyed by deed, and in every state in the union there is an office in which deeds are recorded, and powers of attorney for the conveyance of real estate are alike throughout the whole country. So far as the Mechanics' Lien Laws are concerned they are but the adoption of the statutes of Pennsylvania.

The important subject of wills is the creature of statutes in most of the commonwealths, and there is a marked similarity throughout.

The English Statute of Frauds, 29 Charles II, Chapter 3, or some modification of it, is enacted in all of the states except three.

The great body of law relative to contracts is much alike. Conveyances in trust for the benefit of the donor is for all practical purposes the same throughout the various commonwealths. Lately the law relative to negotiable paper has been assimilated by the various states adopting nearly the same statute.

Even as to the subject of divorce, there is not such a wonderful difference in the statutes of the various commonwealths. In all of them adultery is recognized as a ground for the dissolution of marriage. Impotency of either party in practically all of the states is sufficient to annul marriage.

In thirty-nine of the states for cruelty a divorce may be had. In thirty-six of the states intoxication is a sufficient cause for the court to dissolve the marriage tie. Failure to support is sufficient cause for a divorce in New Hampshire, Massachusetts, Rhode Island, Maine, Indiana, Michigan, Nebraska, Delaware, Tennessee, Nevada, Colorado, Washington, Idaho, Wyoming, California and Dakota, and in nearly all of the states imprisonment in the state's prison so affects the marriage knot that the courts will sever it. Disappearance of either of the spouses is so grievous a fault down in New Hampshire, Vermont, Rhode Island and Connecticut as to free the other from the bonds of matrimony provided the court so decrees.

In New Hampshire, Massachusetts and Kentucky, where one party embraces a religious belief, that marriage is unlawful, this is such an offense against the unsinning member of the partnership that he or she, as the case may be, has just cause to have the partnership affairs wound up.

Down in Missouri and over in Wyoming the husband must not be a vagrant, and in Illinois and Tennessee neither husband or wife must

attempt the life of the other. In none of these states do any of the foregoing provisions relative to divorcement seem to affect the social relations of the people to any great extent, but in many of the states there is what is called the omnibus clause. In Connecticut this clause reads as follows: "For any such conduct as permanently destroys the happiness of the petitioner and defeats the purpose of the marriage relation."

In Wisconsin the law giver was very tender of the gentler sex and his language is as follows: "When, by reason of his conduct towards her being such as to render it improper for her to live with him, the court is of the opinion that it will be discreet and proper to grant the divorce."

In this state the language on the side of the band wagon is: "For any other cause deemed by the court sufficient, if satisfied that they can no longer live together."

In Arizona there is a clause in the statute law relative to divorce that will not have to be stretched as has been the preamble to the constitution of the United States. It is as follows: "When the case is within the reason of the law, within the general mischief the law is intended to remedy, or within what it may be presumed the legislature establishing the foregoing causes would have provided against had they foreseen the specific case."

It is altogether likely that these omnibus clauses are productive of a great deal of mischief. Not so much because of their language as on account of the character of men who act as judges in many of the western states.

In Connecticut where one of these omnibus clauses has been in the statute law for years it is practically as hard to get a divorce as it is in the state of New York, which state for absolute divorce recognizes but one ground—adultery; but in Connecticut the men who are elected judges are men of mature years and of settled habits.

The different states having such a wide variety of resources and diverse interests, could not in the very nature of things, make statutory law uniform. Even in the state of Washington there are laws enacted which are inapplicable to every section of the state and it is difficult to agree upon a policy of legislation even within this state. Who could vouch for the legislature of this state, or any other state, allowing matters of practice to stand undisturbed. We understand that it is intended by the advocates of uniformity of state legislation to make a general code, upon certain subjects like divorce laws, and rules relating to commercial paper, banking, insurance and the like subjects. There are two insuperable difficulties:

First—The people or the legislatures of the different states have

different views as to what laws are proper and what are improper. The liberal statutes which prevail in some states relating to divorce would not in any event be adopted in other states. People have grown up under different systems and they have imbibed the spirit of those systems to such an extent that there never could be any agreement.

Second—If the laws were uniform today, they would be changed by amendment so that the uniformity would only exist maybe between the time of the adoption of the general act and the time of the meeting of the first legislature thereafter.

Again the decisions of the courts would not be uniform upon like statutory enactments. It is true that there would be a tendency towards uniformity of construction of like statutory provisions, but we take it that constitutional provisions would render uniform construction in many instances impossible, as applied to certain subjects.

Upon the whole we are of the mind that the only practical way of bringing about a uniformity as to divorce laws and statutory law relative to commercial paper is to turn these matters over to the general government, but in this we deem there is greater danger than that experienced by leaving these matters where the fathers of the Republic placed them.

Respectfully submitted,

E. F. BLAINE.

EDWARD WHITSON.

President: Gentlemen, what will you do with the report? The report is open for discussion, and, unless there is some objection, the report will be received and filed.

President: The next in order is a paper by N. T. Caton; subject, "Some Pioneer Judges I Have Known." (See appendix.)

Mr. Jacobs: Mr. President, having heard the statement of the gentleman, and having been an actor in some of the scenes which he has briefly cited to the brethren, I feel it my duty to state a few facts in connection with some of the persons whom he has mentioned, notwithstanding he declared he would attend to my case, with some of the others, further on. Judge Wyche I knew well; he practiced before me when I was chief justice of the Territory and I agree with what Mr. Caton said in regard to his ability. He was possessed with

one of these insinuating, discriminative, logical minds, and that would always relieve him from his difficult task, or seeming difficult. He was a man of talent and indomitable courage. At Port Townsend, in the trial of a very important case, his lungs were bleeding badly. I offered to adjourn court for him, but he insisted on having a night session. It was a damage suit in which the complainant asked for ten thousand dollars damages. So great was the effect of the speech he made on that jury that, when they retired to their room to consider of their verdict, eleven of those jurors voted for the full sum. But there was one cool-headed man on that jury who brought them down to a verdict of \$2,500. But what I was going to state was this: During the time he was addressing that jury with impassionate language, the blood would fairly spout from his mouth, whilst he laid down upon a bench and ate salt for the purpose of staying him. I simply state this to show he was a man of indomitable courage. Judge McFadden I knew well, also. He was a whole-souled double-souled man. Let me state an incident that occurred. He had the defense. I have heard of men selling liquor to Indians; the defense usually have a friend; the argument usually was about half devoted to questioning the policy of such kind of legislation on the part of congress. One case where the man was a notorious offender, I thought it devolved upon me to put a stop to some extent to that kind of a plea to the jury. He was a judge in Oregon, if you remember, before he came over here. As one of the judges of the supreme court of Oregon he rendered a decision upon one of those kind of cases; as judge he portrayed the horrors and dangers incident to the sale of liquor to these uncivilized savages; he mentioned the unprotected women and children who were put in great danger by such kind of practices. I told the jury when I came to address them, as judge, that the policy or the impolicy of the law was not a question for them to consider, or mind, but upon the subject of policy I thought it my duty to impress an opinion upon this subject, and said I would do so by reading the

opinion of a very learned judge who once graced and honored the bench in Oregon. I read this decision of Judge McFadden. When I got through he said: "Judge, who wrote that opinion?" I said I didn't know, but I found the name of Judge McFadden signed to it. (Applause). But I think I must close. The past is rich in incidents.

President: The next will be the report of the Committee on Grievances.

Mr. Battle: Mr. President and Members of the Association, if any member of the Association has had any grievance during the last year, he seems to have handled it alone, to his entire satisfaction, as there has been none handed to the committee, and I therefore beg that the committee be pardoned for not preparing a report in writing.

President: This morning we had the report of the Committee on Jurisprudence and Law Reform, and that was discussed partly, and some suggestions made, but it was adjourned over until we had further time. Now, we have concluded the business of the afternoon session, and I think we might resume that report. This morning some of you were not here. It was the recommendation of the committee to provide for the separate elections for supreme court and superior court judges. The third suggestion was as follows: "We recommend such changes in the probate law," etc. What will you do with the recommendation, gentlemen?

Mr. ————: Mr. President, I move that the recommendation be adopted.

Mr. Ronald: I move as a substitute that the recommendation go over to the next session. Motion carried.

President: The fourth suggestion was, "Enlargement of powers of partnership administrators." What will you do with this?

Mr. ————: Mr. Chairman, I move you that this go over until the next session. Carried.

President: Fifth, "We recommend a change in the corporation laws," etc. What will you do with this recommendation?

Mr. Stiles: Mr. President, in order to bring it before the house, I move that the Association do not concur with the recommendation.

Mr. Ronald: Mr. Chairman, I don't know whether I am in favor of Judge Stiles' motion or not. It is a matter every lawyer has had to face time and again and I would like to be informed on it. I wish we could hear some of these corporation lawyers on the other side. I don't want to say I approve it or disapprove it, without further consideration.

Mr. Root: Mr. Chairman, I hardly indorse what Mr. Ronald said, and unless the committee is here to give us some enlightenment, I think it well to have this discussed at our next meeting, and make this suggestion: That two members of the bar prepare papers on the subject, one on each side. I think it is a very important question to the state at this time. I think if the matter was presented at our next meeting by two members of the bar with papers on the subject that perhaps we would be prepared to make recommendations.

Mr. Battle: Mr. Chairman, I have always myself been unable to understand the rule existing that one corporation could not possess and utilize stock in another corporation. Now a corporation, such as is organized and conducted in this day and time, should, it seems to me, be in no wise hampered more than individuals in the conduct of their business. The support of a rule that a corporation could not hold or utilize stock in another corporation, therefore, without giving the matter a moment's thought, I would oppose, and would oppose the Association going on record as opposing the recommendations of the committee. It has been my opinion it would be well to have such a law in this state, but in the very nature of things I have always been unable to understand the wisdom of the rule why corporations should not own stock in another corporation as much as individuals or partnerships, and if it is to be voted on at this time I think it should be accepted by the Association.

Mr. Shackleford: Mr. Chairman, it seems to me the recommendation of the committee is too broad. I think this rule about one corporation not holding stock in another arose in cases where a corporation—only in cases where a corporation sought to acquire stock in a competing corporation. For instance, two lines of railroad. It seems to me that that is an exception that ought to be made to the report of the committee. It seems to me it is good public policy to provide that a corporation shall not acquire or hold stock in the corporation of its competitor, and I think the suggestion of the committee ought to be modified to some extent. I think it is true that all the authorities cited in support of that are in cases of one corporation acquiring stock in a competing corporation. Now there might be a good rule and a reason for permitting that not to be done.

Mr. Stiles: Mr. Chairman, I think this is probably the most important subject broached within the State Bar Association to my knowledge. What I have been able to consider about it, I am very strongly opposed to the proposition of Mr. Griggs. The decisions of the courts always ran upon the ground that public policy forbade any such thing, unless the statutes provided it might be done. That is my principal objection—on the ground of public policy—because I am opposed to the New Jersey idea. I think probably the best way would be to refer this matter to the next meeting.

Mr. Grosscup: Mr. President, I was just going to suggest that in order to bring this whole matter before the State Bar Association it be referred to a committee to report at our next meeting, and there are some other things probably ought to be considered in connection with it.

Mr. Stiles: Mr. Chairman, I think that to adopt this plan it would be well to let the committee present it generally and some gentlemen be prepared to discuss the particular thing.

I move, your Honor, please, that the suggestion of Mr. Root and of Mr. Grosscup that the matter be postponed until next

year and the executive committee appoint a special committee to report on the general subject, and that the executive committee appoint at least two gentlemen to argue the matter before our next meeting, and that the subject be made a special order for one of the days of the session, be adopted by this Association. Motion carried.

President: Sixth recommendation: "We recommend the passage of a law wiping out fines of defunct corporations." What will we do with this recommendation?

Mr. Ronald: Mr. Chairman, I move you that we concur in that recommendation. Carried.

Names of Charles Wiley and E. B. Palmer, of Seattle, and J. P. Wall, of Ballard, presented for election as members, and rules suspended and the Secretary instructed to cast the vote of the Association for the applicants, who were declared duly elected.

Mr. Abbott: Mr. President, I was about to call attention to a subject at the last meeting of the Bar Association. I have no desire to open a discussion upon that subject, but I presume we have under discussion judicial reform, and I want to call two or three points to the attention of the Association. Mr. Howe, of Seattle, Mr. Kreider and myself were appointed to draft a bill to present to the legislature in reference to the Torrens System. A great deal of literature was gathered together, and after some time we drafted a bill which seemed to meet the requirements. That bill was submitted to the legislature and introduced only, I believe, in the House, and went upon the calendar after it was discussed once or twice by the judiciary committee, and died. It seemed to be the almost unanimous opinion that such a measure ought to be adopted for the benefit of the people of this state, and there was considerable sentiment among real estate men and abstractors in favor of the measure. My desire is at this time to get some expression from the members of this Association that would tend to get something that would be of benefit

to the people of this state. It seems to me a matter of so much importance it ought to have some assistance in bringing it before the people. The abstractors have heretofore been opposed to the measure, but I think not now; some told me they thought it would result in a boom in their business, and, while I have no desire to conflict with their interests, I am thoroughly convinced it is of benefit to the state that that act be adopted. It is being adopted in the various states of the Union; in Illinois, Oregon, California, and some other states, the scheme is being urged, and being urged vigorously, and I hope that some suggestion will be made that will serve to create public sentiment.

Mr. Ronald: Mr. Chairman, I agree with Mr. Abbott. I think it is a good thing, and I don't want to see it die, and therefore move that the committee be continued with full power to act and to urge that matter.

Mr. F. D. Nash: Mr. Chairman, it seems to me that if the committee is going to be retained they should draw a bill or something so that when we meet again we may be able to discuss it. I don't know how large the bill was that was framed by this committee and presented in 1903, but it seems we could make some arrangements so as to get this matter before our next meeting. All of us are familiar with the title brought down by the Tacoma Land Company, and titles that are so well established, if they could be established by this system it would accomplish a great deal of work. I would suggest that if anything be done at all, that this committee take every action before the Association meets again, so that we can come here with our ideas formed in regard to the matter.

President: I would suggest that the committee report at the next meeting, report a bill even, at the next meeting of the Bar Association so that the matter can be gone over.

Mr. Abbott. It would be very gratifying to have suggestions from the various members of the bar on the bill.

President: The motion before the Association is that the committee having the entire matter in charge be continued with power to act, and report at the next meeting of this Association by a bill. Motion carried.

Mr. Smith: Mr. President, I would like to raise a question here in regard to the time of holding the meeting of this Association. I don't know whether it is feasible to make any substantial change or not, but in the East the idea of meeting in the winter season is meeting with much favor with the Bar Associations. It seems to me the idea, or at least, the experiment, of a mid-winter meeting of the Association is one that might be well to submit to the executive committee, and I would raise this thought as one, perhaps, worthy of consideration. I would make a motion that the matter be referred to the executive committee in regard to the season of the year the Bar Association should meet. Motion carried.

Mr. Gowan: I move that the matter of submitting to members advance reports of the various committees be referred to the executive committee for action. Carried.

President: The meeting will stand adjourned until tomorrow morning at 10 o'clock.

THIRD DAY.

Thursday, Aug. 27, 1903.

President: The meeting will come to order. The first thing will be the report of the Committee on Publications.

No report.

President: The next on the program will be the reading of a paper by L. Frank Brown, of Seattle.

Mr. President and Gentlemen: I rejoice to have this opportunity to present this paper to this audience, and I know, of course, why the Seattle lawyers are not here, because they have heard me before, and I never get to speak twice to the same audience. I do not believe in cruelty to women, and yet I did read this paper to Mrs. Brown, and with that critical discernment of hers which she has always exemplified, except on her wedding day, she said: "My dear, I find some objections to your paper: First, it is like the Seattle railroads, it lacks terminal facilities; second, it reads badly; and lastly, you ought not to read it at all." I make this humble family confession to you, gentlemen, because you will find all of these defects in the next few hours.

Paper read by Mr. Brown; subject, "The Use and Abuse of the Labor Union." (See appendix.)

President: Are there any remarks? The question is open for discussion.

Mr. Brown: Cussing as well as discussing, I presume, Mr. President?

Mr. Rowell: Mr. President, I want, as one, to add a word to what may be said in behalf of the paper which has been read to us. I believe that no other set of men stand in the

midst of things, in all the questions, as do the members of the bar. Their very profession and their daily employment causes them to be the governing principle of society. Today the well read and the well employed lawyer represents some corporation and is talking before the court and jury, and tomorrow he represents the employee and is taking the other side of the question; sincerely, honestly and giving to both of his clients the benefit of his research as a lawyer and his ability as a barrister. That very thing makes the most of us not employed on one side or the other of considerable influence in settling these matters. Now, like probably two-thirds of the gentlemen of the bar present, I came to the bar through the usual common school-farm-a-little, work-a-little, as a workman, and through college, and in that way. I am not isolated in that respect; a great bulk of the bar has risen in that way. A little personal reminiscence might not be out of place. It goes back to where the large labor union, one of the strongest and most powerful, and I think perhaps ranked next to the leader, the Granite Cutters' Union. I was later than its birth but was in a position to know of its beginning from the very start. My father was its second president. That labor union started in this way, and I venture to say, if the truth was known, three-fourths of the labor unions start in a way more or less identical with this. About 25 or 30 years ago large contracts for government buildings in Philadelphia, New York and other Eastern cities were entered into; those buildings to be made of granite. Up to that time it was not great, and was confined to one or two works, chiefly along the coast of Maine. The government made contracts with the owners of those quarries, and those contracts simply show how necessary it is that men should be in those positions who have the welfare of the government and knowledge of the business at heart and in their brain. Those contracts were these substantially: A contract was made with the owners of those quarries that those men furnish stone for buildings at such a price; then in addition to that they should take charge of the manu-

facture of stone for the buildings, the government to pay the bill, and in addition to pay the owners. Now, that condition resulted in less than three years in this: Granite cutters were employed at a rate of six dollars per day and eight hours work; they were compelled to board at the company's boarding houses; whether they lived at home or not, they paid board to the company. They were compelled to work days on days on the surface of a stone where by nightfall the dust from the stone they had raised would not fill a half-pint dipper. They were told that unless they spent three months on a separate stone they would be discharged. Why? Because it was to the interest of the contractors to spend as much money as possible. Six dollars a day, eight hours work and nothing to do practically. There was an overturning of this in Washington. The discovery was made that no contract ought to be entered into between the government and these men who owned the quarries, and a new contract was entered into by which stones were to be delivered to the government at the sites of the buildings for so much money. The time of labor was put from eight to ten hours a day, and the wages lowered from six dollars a day to three and a half, but the board was not lowered. There was employed by the company as superintendent a man of large head and large brain, but he was a workman who believed in his fellow man. He was getting good wages because he understood his business, but the men became restless under the new order of things and a discussion arose; among others, this man of whom I speak was one who took the lead. He was informed that unless he stopped his place would be vacant. He said: "You are not dealing fair with these men; they are not getting wages sufficient to support themselves and their families." "That makes no difference; you must cease this or go." "I will go," he said. He went to different islands along the coast where different men had charge of different contracts, and he found not a place but what his name had been sent ahead. For six months through-

out a large locality and the only place in this country where a stone cutter could get a job, he sought for employment with his wife and children dependent upon it, and found it not. The Granite Cutters' Union was the outgrowth of just that sort of thing. He went to Washington for employment; it was not granted him, and he came back home and organized the Granite Cutters' Union and became its first president, and in less than two years stood upon the floor of congress as the representative of the granite cutters of Maine. That was the beginning, as I say, of the Granite Cutters' Union, and it has gone on from that time. You put power in the head of a man; he may be contented with that power a little time, but sooner or later you find him reaching out and becoming the aggressor, and that is the chief danger of labor unions. I want to enforce upon you the necessity of this body of men taking this subject up from the bottom, giving it study, as my friend Brown suggested to you. Remember there are two sides to this question.

Mr. Porter: Mr. President, the sentiment expressed in the paper read this morning is the consummation devoutly to be wished, but I fear before the community is educated up to the standard recommended that the few of us will long since be laid under the soil before it is brought about, and I fear many of the young men here will pass on the stage of life before it is brought about. When we look at the whole community at large we find that class who occupy positions of influence become highly independent with regard to matters. When we look at the entire community and see the class of people who rule, we see the herculean task it would be to educate them up to the standard. There isn't any question but what the principle is correct, that every man is entitled to the protection of his labor. So far as they are concerned, the wages they receive is the outgrowth of labor when put in connection with something else. Take for instance the farmer. He may be entitled to protection of his labor. What is it? He labors in the

soil; he plants in the soil, and nature brings up the seed. Now, can you get that idea into those who labor by the day? As I say, the education of the masses up to the standard where equal rights should prevail, is something devoutly to be wished. When you take the character of those who are contented to labor without thinking and see the jealousy which permeates their nature, you will see the herculean task it will be to educate them. It is the spirit of jealousy following ignorance, and when you can rid the human mind of those things you can educate them up, but I fear this is a task we will not see accomplished for generations to come. I believe in these unions, but can you help the fragile end that will follow them? You cannot do it. The anarchists will join with them, the fellow that will hurl a stone through your window because you happen to have a nicer one than he has; it is he that will throw dynamite into a factory because he is not interested in it. Now, there isn't any doubt but what the leaders of unions are men with brains. I believe the lawyers, as well as all other men, have a task to perform, and I believe it is the duty of the lawyer to look after it in a conservative manner; to tell them that they have rights, but they must be careful and not trample upon and abuse the rights of others. As I said before, I think it is our duty to try and educate the masses up to that standard, but I believe our lives will be spent before we get the masses up to the standard set forth in that paper.

Mr. McGilvra: Mr. Chairman, I arrived here late this morning and did not hear all the paper, but think I understand pretty well the subject under discussion, and it is only since I became a member of the bar that these unions have existed in this country. I would not say anything on this question, but I do believe it is the most important question, perhaps, agitating the public mind at this time. It is the old, old question between capital and labor. It originated in this country through the unlawful, or at least unjust acts, of the corpora-

tions in particular; all transportation of the country and a large part of the manufacturing business is conducted by corporations, recently got to be monopolies. The condition of affairs is different than in my early days. We never heard of strikes in those days. Capital has power by combination, and has discriminated against the laboring man. I believe labor organizations were created in the first instance in self defense, and that it was necessary for it. Conflict is going on between capital and labor; the main complaint the masses of the people have to make is that they are both despots; nothing I could imagine is more despotic than organized capital and labor; they are the two great evils overshadowing this country today. The question is, how are both to be successfully controlled? There is but one way, and that is by the courts. If they are not, it will result in revolution and riot; it can't be otherwise. Every corporation in the country is but an artificial person and there is no reason why they should have greater rights than a natural person. There is no reason why a manufacturing establishment owned by a corporation should have any more license and rights than individuals, but they have, as a matter of fact. As a matter of fact while those corporations exist and are of necessity creatures of the law, yet they are not controlled, as a matter of fact, in the courts as individuals would be. I believe the courts, and the judges in particular, have a greater responsibility in regard to that matter than any other class in the community. These corporations employ the best lawyers they can find. They are business men, and it is with reluctance that members of the bar take up a case against corporations. On the other hand, individuals organized all over the country the labor element into these unions, and then the combination of the unions, and they exert a powerful influence; but the main question so far as I have heard it discussed, is the power of these labor unions to control the entire labor element of the country. Every man has a right to work or remain idle; every man has a right to quit his job or secure another.

but the object and purpose of these unions, so far as I have been able to discover, is to absolutely control the manufactories of the country, the transportation of the country, the mills, and everything else. Now they seek to do this by combined effort. Under the laws and regulations of these unions those in charge of the organizations order a strike, and they are compelled to do it. They do it as a matter of fact. But the unions seek to carry the proposition further so as to control every man, whether he belongs to the union or not. They do it by force, if not otherwise. I say that is a crime; it can't be tolerated. It seems to me it is impossible to be tolerated by any government any length of time and the government itself exist. I believe the government, both state and national, must in self defense control these labor unions in that respect. The corporations if allowed to run things to suit themselves become despotic. The labor unions equally so, if not more so. I think this question, which is comparatively new in this country—this conflict between capital and labor—has got to be dealt with by the state government and the general government, or the governments be destroyed. I concur in the proposition that a large responsibility rests with the bar and the courts—with the judiciary of the country.

President: Before we go further in this matter I wish to call attention to the entertainment out at the Lake. Transportation will be furnished every one and we hope everybody will attend.

The application for membership of Aubrey Levy, of Seattle, was received, and on motion the rules were suspended and the Secretary instructed to cast the vote of the Association for him.

President: The next thing in order is the report of the Committee on Obituaries.

No report.

President: As there is no report on obituaries, I would suggest that this report be requested by the Secretary, and he put it in the records, if that is agreeable to the Association.

Secretary: Mr. Chairman, as far as I am informed there have been three deaths in the last year.

President: If there is no objection we will so order. The next thing is the election of officers. The election of delegates to the National Bar Association, three delegates, I believe, is the representation allowed. Nominations are now in order.

Hon. C. H. Hanford, R. G. Hudson, John T. Condon, Hon. George Turner and J. J. McGilvra were placed in nomination.

Mr. Shippen: Mr. Chairman, it is desirable that this Association be represented, and as there are more than three nominated I would suggest, if the constitution and by-laws will permit, the propriety of leaving this with the Executive Committee to consult with these gentlemen and see who could attend.

President: It is a good suggestion. I guess we have no representative there this year.

Motion made that the election of delegates be referred to the Executive Committee.

Mr. Shackleford: Is that in order?

President: I suppose it will go. You have heard the motion that the election of delegates be left to the Executive Committee; are you ready for the question?

Mr. Bates: Mr. Chairman, do not the by-laws require that they be elected by ballot? If so, I would move that motion be amended, and that the rules be suspended and the delegates be elected by the Executive Committee.

President: I believe it does not say anything about how they are to be elected. It simply says they shall be elected but it doesn't say how. But, anyway, it will do no harm to put the matter in that way. All in favor of the motion will signify by saying "aye." Motion carried.

President: The next thing is the election of officers.

Mr. Rowell: Mr. Chairman, at this time it seems to me this Bar Association ought to enlarge its circuit a little bit. We know it has been the invariable rule to have the list of

vice-presidents so that the President would be from the city in which the Association was to be held. Now if that order is to be carried out Mr. Vice-President Peters would be elected President, in view of the fact that Seattle is to have the next meeting. Mr. Brownell, of Everett, spoke last night in a very earnest way of the advantage, and he believed, the wisdom of taking Everett into our circuit. The movement, I think, will have the sanction of the Spokane delegates. I move, therefore, that the number of vice-presidents be increased by one, and that Everett be added to the circuit of the cities in which this Bar Association is to meet, and then when the time comes I will nominate Mr. Brownell, of Everett, first Vice-President, so that in two years from now the meeting will be held in Everett. My motion is that we increase our circuit. Motion carried.

Mr. Rowell: Mr. Chairman, in talking with the Spokane delegate he seems to think it might be the other way. I will make this motion: I move that the Secretary be instructed to cast the ballot of this Association for the following officers for the ensuing year: President, W. A. Peters; First Vice-President, F. H. Brownell; Second Vice-President, P. F. Quinn; Third Vice-President, Edward Whitson; Secretary, E. G. Kreider; Treasurer, Nathan S. Porter.

President: It has been moved and seconded that the rules be suspended and the parties elected, as read by the mover.

Mr. Town: Mr. Chairman, as I understand, this will bring the next two meetings on this side of the mountains. It seems to me it would be a good idea to go to Spokane from Seattle and then come back to Everett.

Mr. Warner: Mr. Chairman, the Bar Association, when it convened in Spokane, did about the same that Brother Rowell is attempting to do now. They put Yakima in the circuit and postponing the meeting at Yakima and pushing her back, it seems to me, if Spokane has to go back a year, she could go back one more year and allow Yakima to have it; it seems to

me no more than justice to arrange so that Yakima can have it in a year from that date. I move as an amendment to the motion that Yakima have the meeting to be held two years hence.

Mr. Rowell: There is a good deal of justice in that, and I desire to second the motion, and make Mr. Brownell the third vice-president. I will withdraw my motion. Officers in final motion as follows: President, William A. Peters, of Seattle; First Vice-President, Edward Whitson, of North Yakima; Second Vice-President, F. H. Brownell, of Everett; Third Vice-President, P. F. Quinn, of Spokane; Secretary, E. G. Kreider, of Olympia; Treasurer, N. S. Porter, of Olympia. Motion carried and the above named gentlemen declared duly elected to the offices named for the ensuing year.

Mr. Shippen: Mr. Chairman, I suppose we can rely upon the unwritten law, and that the next meeting of this Association will be held in Seattle, and on behalf of the members of the Association I extend to you all an invitation to come to Seattle next year. Now, without praising the opportunities of Seattle, I think we can make it attractive to you. And now I think, as a committee of the whole, we might spend a few minutes in discussing how to make these meetings more effectual in the future. I think our reports of the last ten years have been of value. I think we create literature worth preserving. I attended one meeting in Spokane two years ago and I was the only one from Seattle that crossed the mountains. I think we want to create more interest in the meetings. Now, next year we will have a meeting with a meeting of the legislature in view, and I hope the members of the past legislature and the future legislature will read the paper of Judge Stiles as read last night. I think that it is a practical suggestion if we carry it out; the plan moved here yesterday that a synopsis of the reports be submitted, and then we can come prepared to debate the question intelligently. I note with regret, Mr. Chairman, that of all the committees there is not half of them

has been present at this meeting. Now, with the facilities of the mails, the telephone and telegraph, I think our committee should be more efficient. I would suggest that next year when we come to Seattle that we have a good program, and that as a deviation it might be well for the members of the Association to bring their families, their wives with them.

Mr. Rowell: Mr. Charman, The King County Bar extends to this Association a most hearty and welcome invitation to come to Seattle next year.

Mr. Jacobs: Mr. President, when it comes to exhorting I always want to be counted in. I think myself we ought to manage some way to intensify the interest connected with these annual meetings of our Association. I have the honor to be the president of our Bar Association in King County for the time, "Wherein the memory of man runneth not to the contrary," and a notice from myself as President to that Association, published in our newspapers, would bring to either of the court rooms in that county from a hundred to two hundred lawyers. Now, I have hoped we may be able by getting this fresh blood from Everett and getting a little more push and enterprise into the members of this Association that you will come to Seattle next year full of enthusiasm for the Association. And then we will go across the mountains to Spokane and stir up that town. I am for this motion heartily.

Mr. Brown: I want to offer a resolution. Resolution read by Mr. Brown as follows:

Whereas, An all wise providence has brought us to enjoy the hospitality of the legal profession of the City of Destiny; and

Whereas, Human sociability and splendid entertainment on the part of the local bar of Tacoma has combined so splendidly with said All Wise Providence; now therefore be it

Resolved, That the vote of thanks for the generous spirit of fellowship and entertainment of the Tacoma profession be given and the same enshrined in the tablets of our memory.

And further the Mover saith not.

President: I believe the resolution is out of order, Mr. Brown, under the constitution.

Mr. Kreider: Mr. President, I want to rise to a point of order. The by-laws merely forbid the passage of resolutions complimentary to officers or members of the Association, and this resolution is addressed to the Tacoma Bar, many of whom are not members of this body. I second Mr. Brown's motion. Motion carried.

President: The next thing will be the fixing of the time of the next meeting.

Mr. Rowell: Mr. Chairman, I move that be left with the Executive Committee. Motion carried.

President: Is there any unfinished business. If there is none a motion to adjourn will be in order.

President: We will stand adjourned.

The Association adjourned sine die.

EUGENE G .KREIDER, Secretary.

APPENDIX.

APPENDIX.

ADDRESS OF R. G. HUDSON, PRESIDENT.

The last century has been the most marvelous in the world's history in its wonderful and enormous industrial progress and material development. When we begin to enumerate its achievements our minds are lost in amazement and our perception is confused with wonder.

Among the most important and prominent of these achievements are combinations of industrial concerns and organizations, to regulate and control the prices and supply of many of the conveniences and necessities of life, which are popularly denominated "trusts." The popular meaning given to the word "trusts," now, is the same in which I use it today, and this is, a business combination to control industrial commodities and products, fix the prices and regulate the supply thereof. It is true that the monopolistic combine has existed occasionally for many centuries, but not in the form and with the methods and gigantic proportions of the modern trusts.

So powerful, numerous and menacing to the popular welfare have such trusts become that the question of their legal control and regulation is the most important domestic problem confronting our people. The lawful ways and means for the solution of this question must be devised and executed mainly by our profession; hence it behooves us, as lawyers, to give this subject profound and thoughtful consideration.

During the past few years a trust mania appears to have seized upon the country and the idea seemed to prevail to put almost every line of business into a trust. Under the present condition of industrial progress and development, combinations of capital and industry seem to be essential to successful results in most lines of business. The needs of commerce, and the industrial welfare of the country cannot apparently afford the prevention or destruction of these combinations. This would too greatly disturb the business equilibrium of the country and too seriously interfere with its growth and progress. We must control without destroying them. We must, if possible, regulate them without materially disturbing business and retarding

industrial development. The task is a most delicate, difficult and responsible one.

Trusts may be classified under three heads:

First—Combinations by pooling agreements and selling agencies, which leave the several parties thereto independent of each other, except as to prices, amount of business, etc.

Second—The transfer to and deposit with trustees of the stock of the several corporations engaged in any particular line of business, for which certificates are issued, for the purpose of giving such trustees the power to control all of such corporations, so far as fixing prices, dividing territory and regulating output.

Third—The absorption by one great corporation, by purchase or otherwise, of the business and properties of all concerns engaged in a particular line of business.

It has never been a matter of serious legal difficulty to prevent trusts of the first and second classes when brought before the courts, because their organization is in direct conflict with long and well established principles of the common law and the interpretation thereof by the courts. When, however, it comes to deal with the third class, which of late has become the popular form of trusts, a much more difficult legal problem presents itself; and, indeed, unless such a combination violates, either in purpose or acts, some constitutional provision or statute, it is practically invulnerable to legal attack, provided, the corporation takes in the properties of the various businesses it intends to absorb and control. There is no law limiting the amount of capital a corporation may have, or the quantity or value of the property it may own, or the volume of business it may do. If engaged in interstate commerce it is, as to such business, practically beyond the scope of state laws and can only be reached through the Federal courts, when its purposes or operation are in conflict with the interstate commerce provision of the Federal constitution, or some statutory enactment under said provision. If, however, such corporate combination is confined in its operation and business to the territorial limits of some particular state, the ability to control and regulate it becomes less difficult, because the state has full and exclusive jurisdiction of it. The difficulty then presents itself of obtaining proper legislation for the purpose and securing its enforcement.

I believe it is less difficult to procure national legislation on this subject and to enforce it than to accomplish the same thing in the states.

In our own state we have a constitutional provision declaring most directly against trusts and combinations under which no legislative

action has been had; although there are numerous and constant violations of it. At the last session of our Legislature a bill against trusts and combinations passed the lower house with but few dissenting votes, but a motion to reconsider was made and the house was persuaded to reconsider and defeat the bill, because it would, if enforced, prevent combinations and agreements as to prices and output in the lumber and shingle business in this state. In short, because it might accomplish just what the constitution intended. We find constitutional provisions, or statutory enactments, against trusts and combinations in more than thirty of the states, but they are enforced to a very limited extent. There is, in other words, more law against trusts than disposition and ability to enforce it. Whenever the enforcement of the law of any state affects its own business and citizens it is apt to be a dead letter.

The common law favors competition and abhors a monopoly. It has always regarded a monopoly as in derogation of the common rights of the people. More than three hundred years ago a statute of England declared that "no man or set of men are entitled to exclusive public emoluments or privileges from the community." At that time, in England, monopolies were created by grant from the crown of exclusive rights to control the manufacture or sale of commodities. They reached extreme development in the reign of Queen Elizabeth. Lord Macauley says, "There was scarcely a family in the realm that did not feel itself aggrieved by the oppression and extortion which the abuse naturally caused. Iron, oil, vinegar, coal, lard, starch, yarn, leather, glass could be bought only at exorbitant prices."

The people rose in their fury and resentment and demanded relief. Relief first came from the courts. In the case of *Darcy vs. Allein*, decided during the reign of Queen Elizabeth, the court held grants of monopolies void. This first declaration of the principles of the common law against monopolies was followed in the succeeding reign by a statute which declared all grants, excepting patents, as contrary to the laws of the realm utterly void and of no effect, "and in no wise to be put in use or execution."

In the above case Darcy's right to a monopoly under a grant from Queen Elizabeth, conferring on him the exclusive privilege of manufacturing playing cards for twenty-one years, was declared void as against public policy. The court in that case enumerated the following incidents of monopolies:

1. "The price of the same commodity will be raised, for he who has the sole selling of any commodity may and will make the prices as he pleases."
2. "The second incident to a monopoly is that, after the monopoly

is granted the commodity is not so good and merchantable as before, for the patentee having the sole trade regards only his private benefits and not the commonwealth."

3. "It tends to the impoverishment of divers artificers and others, who, before, by the labor of their hands, in their art or trade, had maintained themselves and their families, who will now of necessity be constrained to live in idleness and beggary."

These incidents are characteristic of the monopoly of the present day when it becomes master of the field.

The Supreme Court of the State of Ohio, in the case of the State vs. Standard Oil Company, 49 Ohio State 137, seems to be of the same opinion as the court was in the Darcy case as to the cupidity of monopolies, judging from the use of the following language:

"Much has been said in favor of the objects of the Standard Oil Trust and what it has accomplished. It may be true that it has improved the quality and cheapened the cost of petroleum and its product to the consumer. But such is not one of the usual or general results of a monopoly; and it is the policy of the law to regard not what may, but what usually happens."

Experience shows that it is not wise to trust human cupidity where it has the opportunity to aggrandize itself at the expense of others.

The claim of having cheapened the price to the consumer is the usual pretext on which monopolies of this kind are defended, and is well answered in *Richardson vs. Buhl*, 77 Mich.632. After commenting on the tendency of the combination known as the Diamond Match Company, to prevent fair competition and to control prices, *Champlin J.*, said: "It is no answer to say that this monopoly has in fact reduced the price of friction matches. That policy may have been necessary to crush competition. The fact exists that it rests on the discretion of this company at any time to raise the price to an exorbitant degree. Monopolies have always been regarded as contrary to the spirit and policy of the common law."

The very fundamental right that our forefathers sought in this country was freedom of trade and competition, and relief from all spoliation of their private rights by public authority. There was implanted in them a deep-rooted opposition to monopolies. They brought this feeling with them to America, and have transmitted it as a distinct heritage to us, their descendants, and we may well believe that this feeling of opposition when aroused is sufficient to assure us that monopolies, however created, will never be permitted for any length of time to interfere seriously with the "indubitable rights and liberties" of the people.

The monopolies which are the most difficult to control by law, and

which are to give us the most trouble in the future, are those which assume the form of corporations. Nearly fifty years ago one of the justices of the United States Supreme Court, referring to the pretentious spirit of corporations, said: "It will establish on the soil of every state a caste made up of combinations of men for the most part under the most favorable conditions in society, who will habitually look beyond the institutions and the authorities of the state to the central government for the strength and support necessary to maintain them in the enjoyment of their special privileges and exemptions. The consequence will be a new element of alienation and discord between the different classes of society, and the introduction of a fresh cause of disturbance in our distracted political and social system." In describing their traits he says: "They display a love of power, a preference for corporate interests to moral or political principles or public duties, and an antagonism to individual freedom which has marked them as objects of jealousy in every epoch of their history."

The only monopolies authorized by law or which derive their existence by grant in this country, are patent rights, copyrights and franchises for the operation of public utilities. These are said not to encroach upon existing rights or deprive any class of persons of privileges already possessed.

The monopolies, however, which have grown up in modern times by combination agreements into trusts in their various forms, to control, and consequently to enhance the prices of the necessities of life, are those with which the people are more concerned. These have become the medium of a very large portion of our commerce and trade.

There is quite a difference in the corporation laws of the several states of the union. Some have been enacted with a view to encourage corporate organization by offering great inducements for their formation by placing the fewest possible restrictions, obstructions and liabilities upon them and the stockholders. New Jersey is a notable instance of this. On account of the convenient location of New Jersey with reference to this country's great financial center, New York City, she will doubtless continue to retain the leading business in the formation of corporations, so long as her laws offer the same facilities, inducements and laxity as at present, and nothing is done by the other states to handicap, so to speak, her corporations from doing business therein.

By the way, it is quite interesting to review the history of corporate legislation in New Jersey and observe how the law was, by degrees, made more inviting to corporations until it now permits of the per-

petration of the most gigantic frauds in this line ever perpetrated under an enlightened and free government.

To illustrate: In my line of business I had occasion recently to look into the affairs of one of these New Jersey corporations, doing business in this state, and which had been put into the hands of receivers. It had an authorized capital of \$25,000,000, but began business with a subscribed capital of only \$1,000. It issued and sold \$3,000,000 of debenture bonds with which it purchased the property and means of doing business, either directly or through a "dummy," issuing also, without actual compensation, over \$13,000,000 of its capital stock. After a career of a little more than a year, it failed. It then appeared by report of its receivers to own assets, placed at a very full valuation of about \$4,500,000, with liabilities of a quarter of a million dollars in excess of this sum. There is no stock liability enumerated among the assets, yet there are \$9,000,000 more stock outstanding than the total value placed on its assets. In this case we have a practicable example of the feat of the fellow who attempted to lift himself by his own boot straps. This instance, I take it, is a fair sample of many of the modern offspring of the New Jersey corporation laws. In the case of the United States Steel Company I understand that a similar procedure was had, and that with an authorized capital of \$1,000,000,000 only \$300,000 of this was subscribed, or \$3.00 to every \$10,000, yet debenture bonds have been issued to take in the various properties of the concerns absorbed, generally at prices far in excess of their value, and a greater part of the authorized stock issued, without any adequate value being paid therefor. Under the statutes of New Jersey, up to 1896, as interpreted by her Supreme Court, the stockholder was held liable for the face value of the stock received by him, whether bonus or not, if necessary to pay creditors; but in 1896, in order perhaps to make the field more attractive to corporations, the law was so amended as to allow the purchase by a corporation of any mines, manufactories, property, etc., necessary for its business, and stocks of any companies or corporations, etc., and to issue stock in payment therefor, and making it fully paid stock; declaring that the holder should not be liable for any further payment thereon, and that the judgment of the board of directors as to the value should, in the absence of actual fraud, be conclusive.

It seems that the formation of corporations in this little state has proven so remunerative that several other states have entered the field as competitors in the business, and among them the state of Delaware. The following is a list of sixteen reasons for the advantage of incorporating in the state of Delaware, which has been circulated to attract corporations to that state:

First—The corporation may hold its annual meetings outside of the state.

Second—May keep its original books outside of the state.

Third—May issue full paid stock for cash, property, or services.

Fourth—May carry on any lawful business, except banking.

Fifth—May have a perpetual or limited existence.

Sixth—May be a mortgagee or mortgagor.

Seventh—May carry on its business in any part of the world.

Eighth—May have a capital stock of any amount, being not less than \$2,000.

Ninth—May begin business when \$1,000 is subscribed, and this subscription need not be paid till the board of directors so direct.

Tenth—May hold and own stock, bonds, etc., of other corporations as trustees or otherwise and vote stock so held by it.

Eleventh—May have two or more kinds of stock, with such conditions as may be desired.

Twelfth—May easily be dissolved.

Thirteenth—May merge or consolidate with any other corporation.

Fourteenth—May easily increase or decrease its capital stock.

Fifteenth—May hold assets and create liabilities to an unlimited extent, unless limited in the charter or by-laws.

Sixteenth—May organize with three or more persons as incorporators who may reside in any part of the world.

This only furnishes an object lesson of the difficulty of harmonious action by the states. While some are trying to suppress the frauds and evils of trusts others are deliberately encouraging them.

By the partial enforcement of the common law and the statutes of the various states and of the United States against trusts created by agreements, these combinations have of late been taking the form of corporations, and thus creating legal entities which are authorized and protected by law. As corporations are the creations of legislation it is competent by legislation to say on what terms they may do business, or, indeed, whether or not they may do business at all.

Congress and the Federal courts have only such powers over corporations as may be derived from the interstate commerce clause of the constitution, and the laws enacted thereunder. Congress has the sole power to legislate on matters pertaining to or affecting commerce with foreign nations, and among the several states, and with the Indian tribes. I think it has been very well established by our National Supreme Court that the states cannot defeat or interfere with the exclusive right conferred on Congress to deal with matters of interstate commerce. This court has only recognized as valid the delegation of power to the states by Congress on the subject which

came within the proper exercise of the police power. A state is thus precluded from any legislation which could control or regulate trusts engaged in interstate commerce. The state can say on what terms a non-resident corporation may acquire a domicile and do business in its territory, or it may exclude it from such privileges entirely, but it cannot prevent it from selling and shipping its products into its borders to purchasers thereof, unless they are such as might be prohibited under the police power.

So it appears that a state has a right to discriminate against foreign corporations asking for domiciles, and to do business in its territory and in favor of domestic corporations, without violating the clause of the constitution which declares that the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states; but when the question involved is one of interstate commerce a foreign or non-resident corporation stands upon the same footing as an individual. Hence we see that absolute exclusion by a state is not practicable, so as to prevent foreign corporations from doing an interstate commerce business within its borders. In other words, the foreign corporation need not ask, or get, any favor from a state in order to do business therein, so long as it confines its operations to interstate commerce. But the state may deny them the use of its courts in enforcing their contracts.

The conclusion is that congress has no power to deal with trusts except so far as they may interfere with interstate commerce, and that states have no right to control or regulate corporations or individuals in matters of interstate commerce; that, while a state may regulate its own corporations, and fix the terms on which they may do business, and interpose terms and conditions on foreign corporations, as a prerequisite to the establishment of a domicile and doing business therein, yet, it cannot prevent a foreign corporation from selling and sending its goods into its borders. This leads us to the determination that the National constitution should be amended so as to give congress more power in order to be able to get adequate remedies to fully regulate and control trusts. Congress should have jurisdiction of corporations doing an interstate business, so as to secure uniformity of law and action, and to insure anything like a general and uniform enforcement of the law.

With evolution and development in business affairs, combination of property and industry, of capital and labor, are inevitable. It is more possible to prevent them than it is to return to individualism in business, or to abolish the use of steam, electricity, machinery and modern appliances; hence the country recognizes the expedience

and necessity of such combinations and seeks to control and direct them so that they may not be hurtful to the people.

There are three cardinal remedies that may be applied "whenever any private monopoly gets control of any commodity, convenience or necessary important to the public welfare," viz:

First, it may be destroyed by restoring competition; or, second, it may be put under governmental control; or, third, taken over by the government and administered for the benefit of the people.

It may be that all three of these remedies will have to be applied, according to the nature of the business done, and other circumstances. Another experience like that of last winter, in the territory dependent for fuel on the anthracite coal mines, may result in the operation of these mines by the state, or the general government. This method was much discussed, and there was doubtless much sentiment created in favor of it, particularly among the sufferers. Whenever hardship, oppression and want are brought home to the people by the methods of trusts, there will be an outcry that will crystallize into legislation of a drastic character, and strenuous action will follow. Nothing, perhaps, has done more to arouse public sentiment against trusts in this country than the last strike in these anthracite coal mines. Not many years ago the idea of government ownership and control of railroads and the telegraph was regarded as one of the vagaries of the populist, but today it has many strong supporters among the most intelligent, and especially among the profound economic students of our country. Although much opposed to the scheme at one time, I am now prepared to admit that its adoption in our country might be best for the general welfare of the people, and a great help to the cause of good government and civic righteousness. I am inclined to predict that this will be one of the realizations of this century, and perhaps during the life of some of us.

There are no business organizations in our country which take such organized and regular interest and activity in political and legislative affairs as the railroads, ostensibly and plausibly, to protect and further their business interests. Indeed, in some localities, and not a few, they seem to control the political machinery, and largely effect the election of the officials who administer and execute the laws. In other words, their friends and tools make the laws and administer them. This seems to be a growing policy with them, and the sentiment in favor of government ownership and control grows with equal, if not greater rapidity, and will, in time, unless said practices cease, materialize into action. Indeed, this may be the only adequate remedy left to the people. While it may be possible to check rebates and discriminations by railroads, through the enforcement of the laws,

It is perhaps not possible to prevent them entirely, or to prevent the participation of railroads in politics, legislation and the administration of the law, so long as they are owned and operated by corporations. Nothing has done more, if, indeed, as much, to build up and foster the great monopolistic trusts than the railroads, through their practice of rebates and discriminations. The Standard Oil Company, through this system of rebates, was enabled to undersell all competitors and drive them out of business, until it placed itself on such a solid financial basis that it could, by its financial strength, overpower and drive out, or bankrupt, its competitors wherever it desired.

This practice of rebates and discriminations, which has been such a creative and sustaining cause of trusts would, in my judgment, be most nearly prevented by examinations, as in case of national banks, and statements or reports under oath. The Elkins bill, which became a law during the 57th congress, would, if it were enforced, prevent this practice; but it is exceedingly difficult to secure the necessary evidence for conviction. What is known as the "Interstate Commerce Law," which has been in force over fifteen years, prohibits these rebates and discriminations; yet the railroads have so persistently violated this law, and the efforts of the Interstate Commerce Commission to enforce it have proven so futile, that the commission became disheartened, and, in effect, pronounced the law a failure. It is hoped, however, that the Elkins act may materially aid in preventing these rebates and discriminations.

By examinations and sworn reports, which should contain the statement that no money, transportation, or other valuable favors, had been used, directly, indirectly, or otherwise, with any public official, at any time, these rebates and discrimination and corruption in legislation, in the execution and administration of the laws and partiality therein towards railroads and trusts might be prevented. In a great measure, particularly if the severest penalties, among them forfeiture of franchise, were provided by law for the doing of these acts. The effort which seems to be made by railroads and some other corporations and trusts to control politics and legislation, and influence official conduct, has become so frequent and prevalent that it ceases to arouse the feelings of abhorrence it should, and has, with many, assumed somewhat the phase of legitimate business, thus verifying the idea expressed by the poet when he said:

"Vice is a monster of so frightful mien,
As to be hated, needs but to be seen;
Yet seen too oft, familiar with its face,
We first endure, then pity, then embrace."

All reasonable and intelligent observers must, under present con-

ditions, realize that combinations in industrial affairs must be recognized as one of the fixed business methods of our country. The strongest advocate of trusts, if disinterested and fair minded, must admit that their formation has been carried too far in many instances, and have become a menace to the financial interests of the country, and dangerous to the rights and liberties of the people. Capitalization has been greatly inflated, stocks watered and bonds over-issued, thus necessitating greater earnings than were legitimate and reasonable in order to pay interest and dividends. The interest and dividends must be earned, if at all, by the suppression of competition or by reducing wages, or by lowering prices paid the producers for the raw materials, or by the use of one or more of these methods.

It might be interesting to quote here a statement of the well known banker, Henry Clews, on the present slump in stocks. He says:

"The present sensational decline in values and the failures and wholesale embarrassments it has occasioned can only proceed from one thing, the enormous over-capitalization of industrials.

"More than five thousand million dollars are represented in the largely fictitious capitalization of industrial combinations within the past five or six years.

"Never in the history of trade and finance have such enormous sums been represented as in capitalizing concerns such as the United States Steel Company, the Northern Securities Company, the International Mercantile Marine Company, Amalgamated Copper and hundreds of smaller corporations.

"The day of over-capitalized corporations, in the opinion of all conservative and well informed judges, is over once and for all. I am afraid the Morgan school and financial schools of a similar type have closed for a long vacation."

If this prediction is true the whole country should be glad.

Doubtless Mr. Morgan has reached the acme of his career as a trust promoter, and the star of his ascendancy as a financier has already passed the zenith of its glory. While he has indelibly impressed himself on the memories of this generation, and enrolled his name high up on the scroll as a financier, had his career in the promotion of trusts not been checked he might have become the most execrated and despised of men.

On the other hand we have the combination of labor suppressing its productive power by lessening the hours of work, fixing uniform scales of wages, by which the inefficient and the efficient, in the same class of work, receive the same pay, and frequently both receive as much as the better should. Antagonism, instead of harmony, characterizes the feelings of these two classes. So we have one class of capitalists and

the other of laborers, engaged in the same business, but hostile to each other in feelings. Both are engaged in raising the prices of the commodities they produce. There is another class, which may be called the third, or middle class, which consists chiefly of consumers. It is made to pay more for what it consumes than ever before, without sharing in the profits. It constitutes the great majority of the people, and naturally resents this arbitrary increase of the cost of living. Only those who are interested in trusts approve of, or sympathize with them, and their methods. Capital not seeking investment in them, disapproves of them; the great agricultural classes condemn them; the professional classes are unfriendly to them; the clergy preach against them; the great students of economics view them with more or less alarm; even the politicians arraign them, and the patriot and lover of justice and fair dealing deplore their practices; those who are deprived of the opportunity of winning success in the business world, by honest efforts and fair means, by reason of the predatory and arbitrary ways of the trusts, execrate and despise them.

The breach is constantly widening between capital and labor. The dislike for each other is intensifying into real hostility. The great third class, which is not made up of the rich or poor, is the balance wheel that must regulate the political machinery and keep it running smoothly. It is the arbiter of the destinies of all. It must rescue the country from the dangers of this unfortunate class antagonism. It is not the rich who save the country in the time of peril. It is not among them that we find, as a rule, the patriotic, home-loving and moral citizenship, which has made our country the greatest and the best, the model of free and enlightened governments. This citizenship comes chiefly from the great third or middle class which places virtue, civic righteousness, patriotism, home life, good character and love of justice above riches and the glittering gems of wealth. From this class have chiefly come the great, sturdy, honest, virtuous, brave and patriotic statesmen and leaders, who have so opportunely appeared in the times of our country's greatest needs and perils, and guided the ship of state to a haven of safety, and made our country the brightest star in the galaxy of nations. In this class rests the hope of our country for future national success and continued greatness.

Mr. Henry D. Lloyd in his work, "Wealth Against Commonwealth," says that "monopoly is business at the end of its journey," by which he doubtless means that it is that stage in any industry where all competition is driven out and a sole survivor has absolute control. Trusts are formed to destroy competition, and when competition is destroyed that love of gain, so characteristic of human nature, will assert itself. Men do not form trusts from philanthropic motives, but for gain.

Personally and individually, they may be charitable and benevolent; they may make bountiful and munificent donations to religion, education and charity, and yet operate the most gigantic and merciless monopolies in the business and industrial world. We have in our minds notable examples of this.

Monopoly, whether the result of exclusive rights granted by the sovereign, or whether created by a combination of men and capital, through great corporations, or other agencies, by which any commodity is practically controlled in its production and distribution, is the curse of industry and the bane of industrial liberty; and while a people may be blessed with all the political liberties of the most benign government, it may be under industrial thralldom. A monopoly controlled by the selfishness and greed which characterizes a majority of men in a position to exercise "their own sweet will," paralyses industry, kills industrial enterprise and blights personal liberty. Give to men, or a combination of men, the sole power to sell any commodity and fix the price, and you will have such a monopoly.

The rights of corporations formed for taking over the majority of stock in other corporations, which will, or may, result in restraining trade or commerce, will be settled by the decision in the Northern Securities Company case, now on appeal. In this case, commonly called the "Merger" case, there was a unanimous opinion of the court, composed of four able judges, against the legality of the scheme, which fact leaves but little doubt in my mind that the decision of the United States Supreme Court will affirm the lower court. The tendency of the courts, latterly, seems to be to liberalize and broaden the scope of the interstate commerce clause of the constitution, and the jurisdiction thereunder, of congress and the Federal Courts.

The attitude and actions of the present National administration and the disposition displayed lately by congress, to regulate trusts, have apparently checked their formation. If there should be a cessation of action against them, for any length of time, no doubt the work would begin again. The scheme to eliminate competition, to cut down expenses of operation, to control labor, and defend against its demands by concert of action, to cheapen raw materials, to enhance profits, to realize large prices for the business and property turned into the trust, is a very inviting one; and whenever it can be accomplished with reasonable safety, it will be resorted to; hence we may confidently conclude that this scheme of combination has come to stay. The question then to consider is, how to regulate and control such combinations by law, so as to prevent them from becoming monopolies.

This is a difficult question to answer. In the first place, there is a

lack of sufficient jurisdiction in either the general government or the states. In the second place, there is a want of harmony and uniformity and may always be, in the laws of the several states, on the subject and no general disposition to enforce them. So we have three legal propositions:

1. The states cannot effectively control, except by unanimous agreement and uniform action.
2. The Federal government cannot control under present laws.
3. The Federal constitution restricts the states in dealing with the question, even if they should unanimously agree.

The Federal authorities can only take cognizance of matters of interstate commerce, and the states are prohibited from doing anything which would interfere with interstate commerce. Corporations are organized under state laws, and are thereby subject only to state laws except as to matters of interstate commerce. It is entirely impracticable to procure uniform action on the part of the several states. While some have enacted laws to prevent trusts, and placed restrictions on corporations, others pursue a policy and enact laws to encourage their formation.

In order to satisfactorily accomplish the regulation and control of trusts, so as to prevent monopolies, the general government should be given jurisdiction of them, by constitutional amendment. Such an amendment would very likely be adopted, if submitted.

Congress would be more apt to legislate more efficiently and wisely than all of the legislatures, and the Federal officials and courts to enforce the laws more generally and promptly; besides, there would be more respect for and fear of the Federal laws and courts than of state statutes and authorities. Congress would be freer from the influences corrupt and otherwise, sometimes brought to bear on legislative bodies by corporations, than state legislatures. It might not be necessary to give the general government exclusive, but equal, or, perhaps, prior jurisdiction to the states over corporations.

A great many remedies for the evils of trusts have been suggested. Among them are, the withdrawal of all special privileges; the prevention of over-capitalization; reduction or removal of tariff; taxation of franchises; equalization of taxes; and publicity as to financial condition, etc.; examinations; punishment and civil liability of officers and directors for violating legal requirements; government control and government ownership and management. Most, if not all, of these have more or less merit in them, but cannot be effectively invoked without additional Federal constitutional power. As the country has not tried any of these remedies, we can only reason about results, if tried, and form our best judgment.

There is no doubt in my mind but that the evils of several of what are called natural monopolies, such as water, power, and light plants and street railways, could be in a large measure avoided by municipal ownership and operation or control. While I was an opponent of this doctrine ten years ago, I now thoroughly believe in it, having observed its trial in a limited way, and given it considerable thought. I am quite confident that the best service for the least money can be had under this system. Indeed, I am satisfied that a uniform saving of at least fifty per cent. to consumers, can be effected. We only have to compare the electric ligh. bills in Tacoma, where there is municipal ownership and management, with those of our sister city, Seattle, where such light is supplied by a business corporation, for proof of this statement. There is no good reason to doubt that, in a large measure, the same results would be attained, if the other public utilities were owned and controlled by the municipalities. This method would result too, no doubt, in the further and greater blessing and benefit of a large decrease in the corruption that exists so extensively in the municipal governments of our country.

I am prepared also to recommend the removal or reduction of the tariff on such commodities as are controlled by trusts, so as to invite competition or make it possible. Sometimes what is termed potential competition is sufficient to prevent the evils of monopoly. There should be a tariff commission, which should have charge of such matters and make recommendations to congress. It would aid quite materially in suppressing monopolies by the general government either buying outright patent rights, or by letting out the use thereof on the payment of royalties, for the benefit of the patentees.

Publicity of statements and examinations, as in case of National Banks, would be a great aid in controlling and lessening the evils of trusts.

The creation of a commission under the Department of Commerce and Labor, to have charge of trusts and corporations; to regulate prices and to see to the enforcement of the law, is, in my judgment, a public necessity.

Strict laws against excessive capitalization, watering of stock and over-issue of bonds should be enacted. The present practice of trusts in paying exorbitant prices for the properties, good will and business of the concerns absorbed should be prevented. There is no difference in effect from three-fold over-capitalization and in paying for properties, etc., three times more than they are worth.

There should be a liability somewhere for all stock and all should be subscribed before a corporation can enter business.

Directors and officers should be personally liable for results of

mismanagement and non-observance of legal requirements, and subject to criminal liabilities as well.

Every effort should be made to secure the payment of a just and equal share of taxes by trusts and corporations.

The practice of rebates, discriminations, the giving of passes or transportation; the use of money, or other things of value in politics or in legislation, or with officials, in any way whatever, should be prohibited under the severest penalties, and to re-enforce this legislation, statements under oath should be required and examination authorized.

All of these remedies, which are good and not harsh or burdensome could be enacted by congress, if its jurisdiction was enlarged, and put in operation and enforced through the Department of Commerce and Labor or a commission created for the purpose.

The tendency of trusts is the creation of great fortunes in the hands of a very small minority, the accumulation of wealth in the hands of a few, and consequently to diminish the holdings of the many. This is unfortunate in any government, and particularly in one like ours.

Great wealth usually leads in time to indolence, extravagance, luxury, profligacy and immorality. These lower the standard of citizenship and weaken patriotism, and result eventually in national decay.

The influence of money and corporate power in public affairs is so great as to become a serious menace to good government. Indeed, it permeates the body politic in so many directions and affects so many interests, directly and indirectly, that its effects can scarcely be calculated. This accumulation of great fortunes breeds discontent, creates class prejudices and may culminate in revolution.

The combination of capital in great enterprises, when honestly and justly managed, may, and has, proven a powerful instrument for developing great industries, erecting factories, employing labor, constructing great arteries of commerce, utilizing modern improvements, building large cities, establishing great educational institutions and promoting the intellectual and moral development of the people. But when it becomes greedy, and has the power, it is always extortionate, oppressive and domineering, and invades with corrupt practices the legislative halls, and pollutes, if it can, the very fountains of justice. If it has the power and is stimulated by greed, nothing is more monarchial, oppressive and rapacious.

It might not be out of place to consider for a moment the effect of trusts on our profession and business. I do not know of any business which suffers more from them. When the several businesses are conducted separately and independently, each usually employs a different lawyer. When combined, a general counsel or attorney is engaged at

salary and he employs assistants when needed. His salary and the pay of his assistants, are much less than the aggregate sum expended for legal services and counsel by the several concerns, and the volume of business is less.

Even if the trusts lowered the prices of living fifty per cent., the profession would be better off without them, in my judgment. As a partial result of trusts, many of the best lawyers in the large cities are serving as clerks.

While combination of capital is of incalculable benefit in the development and progress of industry and the building up of a great commercial nation, and is essential to the handling, development and success of large industrial and commercial enterprises, it, on the other hand, often results in stifling individual enterprise, and business efforts and activity, crushing laudable aspirations and in disappointing worthy ambitions. It stretches out its long and sinewy tentacles and snatches from the individual the prize which he has striven so long and earnestly to reach, just as he is about to win it, blights the hopes and ambitions that have buoyed and sustained him in his anxious struggles for success, drives him from the field of individual endeavor, and makes him a servant.

I cannot close this paper without paying a tribute to the courage, the patriotism, the sagacity and the unwavering fidelity to the rights and liberties of the people displayed by President Roosevelt in the stand which he has taken against the encroachments of trusts; and the vigor and determination he has shown to check their monopolistic and rapacious careers.

Whether or not we all agree with him in politics, or always approve of the soundness of his judgment, we must, if fair, admit that such a consistent advocate and practitioner of civic righteousness, such a fearless friend of the people, such a courageous champion of individual rights, deserves the admiration, respect and applause of a grateful and patriotic people. With such a director, reinforced with the masterful mind, unsurpassed ability and unquestioned integrity of the head of the legal department of the government the present administration has accomplished more than all other administrations combined in the enforcement of the laws against trusts, and emphasizes the fact that so far as the present administration is concerned, it intends that the law shall be respected and obeyed.

We, as lawyers, should be justly proud of the fact that the final arbiters of the great questions which concern the fundamental rights and liberties of the people come from our ranks. That they have been so true and faithful to the great trust reposed in them; that the judiciary of our nation has always been regarded as the impregnable bulwark

of the people's liberties. Let us indulge in the hope that the menial corporate power and wealth may never invade its sacred realm, and that their influence shall never mar its matchless fame and tarnish its pure record. May it always pre-eminently stand forth in the respect, confidence and gratitude of the people.

"Like some tall cliff that lifts its awful form,
Swells from the vale and midway leaves the storm;
Though round its breast the rolling clouds are spread,
Eternal sunshine settles on its head."

SOME PIONEER JUDGES AND LAWYERS I HAVE KNOWN.

By N. T. Caton, Davenport.

The simple fact that the writer hereof came to the Pacific Coast in the year 1849, and into the Territory of Oregon in the succeeding year of 1850, and has been a resident of Oregon or Washington continuously ever since, by itself constitutes but a poor qualification for the performance of the duty imposed upon him on the present occasion. Whether he can perform that duty to his own satisfaction, to say nothing of the satisfaction of others who shall hear or read this paper, is exceedingly doubtful. The inclination and disposition to observe passing events, and the ability to communicate a history thereof in a sensible manner for the information and benefit of others, are also essential qualifications of such a task. In these latter respects the writer feels sensibly his deficiency. There is one thing, however, there will be no attempt to hide. Such an attempt is deemed highly discreditable to any lawyer, and that is: A cheek sufficiently hardened to enable one to tell what he knows without trepidation. Now it is known to all that lawyers have, or are supposed to possess, this characteristic. Some in a lesser, and the many in a greater degree. At all events, none are regarded in this respect as entirely destitute. To the possession of this quality, at least in one or the other of the degrees named, the writer will plead guilty, and, be it good or bad, either in sentiment or in the manner of its presentation or in the grotesque, if not homely, garb in which it may be arrayed, I shall say: "Silver and gold, have I none, but such as I have, give I thee."

The act of congress creating the territory of Oregon was passed and signed on the last day of the session, to wit, on the 14th day of August, 1848.

General Joseph Lane, appointed Governor, did not reach Oregon City, the place named as the temporary seat of government, until March 22nd, 1849. On the last day of the administration of James K. Polk, Governor Lane issued his proclamation giving to Oregon her form of government. While it is not directly in the line of my subject, I desire to mention one incident in connection with the organization of Ore-

gon Territory that I think deserves preservation. General Lane, accompanied by Joseph L. Meek, who was appointed Oregon's first United States Marshal, came to the Pacific Coast overland. They came by what was then known as the "Southern Route." This route brought them by the way of Santa Fe, and thence into California. They had also a military escort. Some of you older ones will remember the excitement incident to the discovery of gold in California. This excitement at the time General Lane reached the mining regions of California, was at its height. All the soldiers constituting his military escort, except the officers and three privates, deserted him and he was compelled to finish his journey without the aid of their protection. I know this statement to be true for I heard it both from General Lane and Colonel Meek.

The first Legislature of Oregon Territory convened at Oregon City on the 16th day of July, 1849. About the first work done was the dividing of the Territory into three judicial districts. The first district was composed of the counties of Clackamas, Marion and Linn. To this district the Chief Justice, William P. Bryant, was assigned. The second district was composed of the counties of Benton, Polk, Yamhill and Washington. To this district Associate Justice O. C. Pratt was assigned. The third district was composed of the counties of Clark, Clatsop and Lewis. No assignment of a judge was made for this district as the other appointee, Judge Burnett, failed to qualify. It may be said in passing that it was at this first session of that legislature at which Champoux County had its name changed to that of Marion, Tualatin to that of Washington, and Vancouver to that of Clark. Of the judges who composed the first Supreme Court of Oregon, I knew but one—O. C. Pratt. In a former reminiscence I gave a short characterization of this man, and shall not repeat it here. Will only say that, while he presided as judge with propriety, he lost no opportunity of showing his importance and replenishing his coffers. The succeeding year, 1851, the bench was composed of Thomas Nelson, as Chief Justice, with O. C. Pratt and William Strong, as associate justices. The Chief Justice was never intended, either by nature or education, for this hemisphere. He was very precise in all his utterances. He it was who told a lawyer who had read and talked law for an hour or more that he fully agreed with him in the proposition for which he was contending and, among other things, said: "Should I hold otherwise the Supreme Court would promptly reverse me." He could not say "Supreme Court" if his soul's salvation depended upon it, but always said "Superm Court." I took it for granted that in his view of the matter the two phrases were idem sonans, and therefore made but little difference whether he used one form or the other.

Judge Strong subsequently occupied a seat upon the supreme bench of Washington Territory. Judge Strong, in addition to being a profound lawyer and an able, conscientious and fearless judge, possessed a kindly disposition and easy and winning manners. I well remember his constant flow of language when engaged in conversation. His conversation was natural and animating. Richly endowed with a retentive memory, his instructive observations, interspersed always with anecdote, invariably left upon the recollection of his auditors the heritage of a pleasant remembrance. While he possessed an incisive wit, it never inflicted a wound. It rather had a tendency to ennoble the victim in his own estimation, rather than to degrade him. This feature in the character of Judge Strong emanated from his goodness of heart, and appeared in his every look and in every accent of his voice. In whatever circumstances he was placed, he took everything that occurred in a good-natured way.

I remember on one occasion while traveling with him, having stopped for the usual meal we sat down to the table side by side. The waiter approached Judge Strong and, bringing his mouth close to the judge's ear, in a low whisper, inquired as to his wants. After the waiter had retired, the judge turned to me and, with good humor sparkling in his eye, remarked: "He is a confidential cuss, isn't he?" In this regard he was the very opposite of Judge James E. Wyche, who at a later period occupied a seat on the same bench. Judge Wyche was an able man. I think it safe to say that no superior to Judge Wyche as a judge has appeared either in Territorial or State days within our borders. His equals probably there have been many. His peculiarities were numerous. Of one or two of these I desire to speak. The nature of Judge Wyche was such that he could brook no opposition, and specially when he was convinced that he was in the right. On such occasions if he indulged in a rebuke it was simply withering. No mollifying salve or ointment followed the scarification. I heard him once in a public address say of a man who had given him some affront, among other severe things, the following, and, that, too, after bluntly naming the man: "When he passes by you, you are compelled instinctively to hold your nose to exclude the offensive odor that attaches to his person, and you can see at a single glance, written all over his ugly mug, in letters discernible for a mile, 'Cave Canem.'" He once said to a jury who returned a verdict, the result of which would be the loss of 160 acres of land to the defendant, that of his own motion he should set aside the verdict, and added: "While I am judge judge it takes thirteen men to steal a ranch." Once in my hearing, and while discharging a grand jury, among other things, he said to them: "I will give your people just one year to consider this matter.

and if the present state of society continues I will see if I cannot find a grand jury that will indict for such flagrant offenses against decency and good order."

While Judge Wyche was a man of undoubted courage, yet he was kind hearted and affable. He was prompt in all his actions and true to his friends. I traveled with him many times over his district and had the very best opportunities to know the man. He was an honest man, and this characteristic appeared prominently, whether at the camp fire or upon the bench. When his demise occurred the community lost a good citizen and the legal fraternity one of its brightest lights.

There are a couple of incidents I wish to relate and, for reasons I deem sufficient, shall withhold names.

Attorney B. had acquired quite a reputation as a criminal lawyer and his powers of oratory were equalled only by his insufferable egotism.

When Judge A. came into the district he was soon apprized of the standing of Attorney B. as a lawyer in the community, and of his wide-spread popularity as an orator and as a successful practitioner and at once determined to make him his friend. Members of the bar imagined that they discovered the leaning of the bench in that direction. While in many instances this is imagination only, its existence is admitted of little doubt in the case now in hand. A very important criminal trial was in progress. The community generally was greatly aroused. Testimony was being introduced. An objection was made and, after a lengthy and somewhat heated discussion, Judge A. to the great chagrin of Attorney B., sustained the objection. There occurred something I shall never forget. Attorney B., even after the decision by the court, very passionately announced to the court his dissent from his honor's ruling, whereupon the court said, "Now Mr. B., here I have decided four times in your favor, and because I have decided against you once, you are mad."

The answer to this statement of the court came hissing hot from the lips of Attorney B., "Not mad, your honor, not mad, but simply disgusted." A view of the man, the attitude he assumed, the contortions of the face, the tone of the voice, and the peculiar emphasis upon the words used are all beyond my power of description, and I must leave them to the lively character of your imagination.

Now once more. The Supreme Court is in session. A large number of attorneys seek admission. Their licenses from other states, one by one, are passed up for the inspection of the court. The Chief Justice, whom I will call M., after seeing that the sheepskin was in regular form and properly authenticated, passed it over to his associate K. who sat on his right, who likewise scanned it closely. Being satisfied,

the Chief Justice passed it over to his associate S., who sat at his left.

S. never deigned to cast his eye upon the document and never touched it, fearing it apparently as he did contagion, but announced in a clear voice, "Admit him; I know him." The next diploma passed through the same ordeal, and when it reached the station of S., he treated it with the same coolness and impartiality he did the first, announcing, "Admit him; I don't know him." So treated, all the applicants, some fifteen or sixteen in number, were all permitted to sign the roll of attorneys. Now please do not ask me where this occurred. It is true, nevertheless, and was an actual occurrence.

Of Judges O. B. McFadden, C. C. Hewitt, B. F. Dennison, William Lair Hill, Orange Jacobs, J. R. Lewis, James K. Kennedy, and Samuel C. Wingard and of lawyers J. S. Smith, J. J. McGilvra, Leander Holmes, Elwood Evans, Henry G. Struve and others, we will have something to say on some future occasion, while we devote the remainder of the space allotted to this reminiscence to a few names of those who acted upon the legal stage east of the Cascade mountains in early days. The names I shall mention are men who figured conspicuously before the courts of the Territory and have long since passed over the dark river.

I will first mention James H. Lasater. In speaking of this man, I can do no better than to borrow what I calmly wrote of him 25 years ago. And the same I shall do largely of those that are to follow. Mr. Lasater, as a lawyer, had many clearly marked and well-defined traits of character. He was persistent in the advocacy of what he believed the correct view. He was a very positive man, and in the trial of a cause was combative in every stage of the proceedings. This latter trait overshadowed every other, and to it his success in life was mainly attributable. He settled in Walla Walla about the year 1862, and transacted a vast amount of business in the courts, and that, too, quite successfully. Mr. Lasater was true to his clients. As a speaker he was not pleasing, yet he possessed a fund of ideas which he could and did present with considerable vehemence and with great confidence. In case of defeat, he was still convinced of the righteousness of his cause. He was a man who thought much and was always ready for controversy on any subject. Sometimes imperious, yet in other moods was kind-hearted and tender. Practicing at the same bar and at the same time, and for a while the partner of Mr. Lasater, was William G. Langford.

Mr. Langford for a time occupied a seat upon the bench of the Supreme Court of Washington Territory and, after admission to statehood, was Superior Judge, first of Walla Walla county and after-

wards of Spokane. Mr. Langford had more than a passing acquaintance with books, and, after a legal question had been examined by him, in its discussion he became a formidable antagonist. He was a man who contended earnestly for the interests of his clients, and rarely if ever lost a point that would prove of advantage. In the preparation of a case he was painstaking and consequently was ready upon every phase which presented itself. In his addresses to the court or jury he was inclined to be philosophical, metaphysical and prosy. He exhibited very little fire or vehemence, and consequently could not to any extent attract or hold the attention of a jury.

I remember well upon the trial of a cause at Walla Walla in 1861 Judge Wyche presiding, and the weather being quite warm, after Mr. Langford had addressed the jury for more than an hour one of the jurors who was up in a convenient corner went to sleep. When Mr. Langford made this discovery he turned and addressed the court about as follows: "Your Honor, I guess I had better quit. I see I have talked one juror to sleep." The court responded: "I think myself you had. Mr. Sheriff, wake up that juror."

Wyatt A. George, commonly called Colonel George, was in many particulars an oddity. Tall and spare of build, he was quick in motion and rather swift in speech. In fact his jaws were always moving, either in speaking or chewing his tobacco. This last he chewed exceedingly fine. For a long time he was called "The Father of the Bar." His brethren at the bar called him "Old Equity." The writer well recollects that about forty years ago when, surrounded by a number of as bright legal lights as may be found in any country, Col. George passed by some member of the crowd exclaimed "There goes a walking law library." Colonel George induced his father and one of his brothers to leave the state of Texas and come to Washington Territory. The father was over 90 years of age. Some four or five years thereafter his father died. When sympathetically accosted on the subject, Colonel George said, "Yes, my father died." He commenced the use of tobacco at seven years of age, and used it continuously throughout his days. I am satisfied had he not been addicted to that filthy habit, he would have lived to a good old age."

Now, lastly, I wish to speak of John B. Allen. He was a later comer to the Territory than those heretofore mentioned. I will simply give you what I wrote of him 21 years ago, leaving to his acquaintances to finish the sketch up to the period of his untimely death: "John B. Allen, United States District Attorney for the Territory, formerly resided on Puget Sound, but has made Walla Walla his home since 1879. He is a very close student and always—probably justice to him would require that we should say invariably—gives a cause

intrusted to him such a sifting, that it must be intricate indeed, if all there is in it does not become manifest to his mental gaze. He manages a case on trial well, is fluent in speech, uses chaste language, bordering upon the rhetorical, and when to this is added his appearance before a jury, being that of candor and perfect sincerity, it is not at all surprising that he is quite successful as a practitioner. Mr. Allen is a good lawyer, observes professional ethics closely, and is withal a gentleman."

STREET ASSESSMENTS.

By F. D. Nash, Tacoma.

The history of the development of law presents no more interesting study than is to be found in following the changes wrought in its construction by the courts in their efforts to adjust its provisions and principles so as to protect public interests in particular cases. It may be defined to be the contest between expediency on one hand and precedent on the other. This tendency to enlarge and modify the law by construction finds its justification in changed conditions, brought about largely through political, commercial and industrial development, and has found a fertile field for its operation in municipal law.

The city is coming more and more to be the center of commercial enterprises, of political power, and of industrial operations; it has from time to time been given more of political autonomy. Its council has become an important legislative body, and its administrative functions have been largely extended, favored by the very liberal interpretation given to its police powers.

The subject of this paper, "Street Assessments," has been chosen for the reason that the decisions rendered by our courts, in cases in which such assessments have been involved, well illustrate the growing tendency to construe the law so as to protect public interests, and for the further reason that they show the difficult problems which have to be solved by courts of last resort in newly settled districts, often rendered more difficult of solution because of the fact that the real merits have not been fully presented and discussed in any one action.

A better understanding will be had of the position in which the courts have been placed by a brief statement of the powers vested in cities over streets, and of the conditions existing in this state when most of the local improvements were made. Municipalities, acting through agents and officers selected by the voters, have complete control of their streets; they can lay out, grade, pave and otherwise improve their highways; can extend privileges by way of franchises and restrict the use to which they can be put; they can

moreover, when public interests demand, condemn property for street purposes. It has been determined, after long contest and much litigation, that the cost of making local improvements may be assessed upon the property situate within the district improved, and that such an assessment is not a tax within the meaning of the law prescribing that all taxes must be equal. This determination is based upon the theory that such property has received a special benefit not shared by other property within the corporate limits; and it is only upon this theory of special benefits that there is any basis for local assessments. Such improvements are usually instituted upon petition of some of the owners of property situate within the district improved, but cities have power to make such improvements without petition, and against the remonstrance of property owners. The method of procedure and the machinery to be used are defined by city charters, subject, however, to statutory limitations and legislative control, which charters vary in different cities.

Let us now turn to the conditions existing when these improvements were made in this state, which differ materially from those in older commonwealths. Our cities cover a large extent of territory, much of which is unoccupied and unimproved, while older cities have gradually extended their boundaries as more territory has been needed for urban purposes. Moreover, much of the property in our cities is owned by non-residents, sometimes as purchasers, often as unwilling owners who hold title through foreclosure. It so happens that many coast cities and towns have been located upon land seamed and cut by ravines, and streets have of necessity been laid out so as to leave, in many instances, property on one side high above grade, and that on the other side as much below, so much so in some instances as to make access to the street practically impossible, rendering it exceedingly difficult to determine the portion of the cost of grading or paving that should be apportioned against the several lots, measured by benefits conferred.

Many of these improvements were made in the days of our early prosperity, when values were rapidly enhanced by speculative demand, and when there was much rivalry between cities—a time when extravagant expenditure was almost universally approved as an evidence of prosperity. The legal and equitable rights of the city, the owners of property in the districts improved, and of the contractors, were not matters that engaged the serious attention of the courts and the bar until there came a day of financial depression; and then the city, the property owner and the contractor discovered that a heavy burden must be thrown upon some one, and the important legal question arose, who should bear this burden? First, the pro-

erty owners sought the aid of the courts; the ingenuity of lawyers was set to work to discover irregularities that would relieve property from the lien created by these assessments. These efforts were in many cases attended with success. Some omission of statutory law, some neglect to follow strictly the many steps provided by charter provisions, or some conflict between statutory and charter law was discovered, which, under the strict construction given in the earlier decisions, voided the assessments. Sometimes, as in *Wilson v. Seattle*, 2 Wash. 543, it was want of proper notice, which the court says in the opinion was a necessary constituent of due process of law, even though no provision was made for notice in the charter. The tendency of the court in these earlier decisions to construe the law strictly was further illustrated in the foregoing case by the holding that the recital in the return of the clerk that notice had been given was not sufficient, as no presumption of regularity could be indulged in. In *Buckley vs. Tacoma*, 9 Wash. 253, the court says, "The power to levy special assessments is to be strictly construed." "The mode prescribed is the measure of the power." In *McAllister vs. Tacoma*, Wash. 272, it was held that the provision in the contract that the contractor should keep the pavement in repair for five years avoided the proceedings.

It becoming evident that, because of some irregularities in the proceedings taken, a large part of the assessments made for street improvements could be set aside, serious question was raised as to the ultimate liability of the city to the contractor, or his successors in interest, the holders of warrants issued in payment for the improvements. Appeal was made to the law-making power which, in 1889, passed an act providing for re-assessments when the original assessment could not be enforced. In this act the clear legislative intent that the property lying within the district improved shall bear the burden of making the improvement is expressed; and the courts, giving force to this declared intent, have, by most liberal construction, sustained almost every re-assessment made. One of the first decisions rendered under this new law was that of *Fredericks vs. Seattle*, Wash. 428, wherein it was held that the re-assessment was valid, though jurisdiction was not obtained to make the original assessment. In *Cline vs. Seattle*, 13 Wash. 444, a re-assessment including property not embraced in the original assessment was sustained; later, in *State vs. Ballard*, 16 Wash. 418, it was decided that re-assessments might be made, although the original assessment was made by a city not legally incorporated. In *Lewis vs. Seattle*, 28 Wash. 639, the court announced the broad doctrine that, if the city once obtained jurisdiction the property owner would not be heard to complain unless t

means employed worked to him an injury, no matter if irregularities were committed. In *Young vs. Tacoma*, 31 Wash., and 71 Pac. 742, wherein it was shown that the original contract required the contractor to keep the pavement in repair for five years, it was held that, while adhering to the former decision in *McAllister vs. Tacoma*, that an assessment cannot include charges for future repairs, in proceedings to re-assess the additional cost by reason of such provision in the contract could be determined and deducted. In the cases of *Annie Wright Seminary vs. Tacoma*, and *McNamee vs. Tacoma*, 23 Wash. 109, and 24 Wash. 591, decision was made that failure to appear before the council after notice given and file objections would estop the property owner from raising any questions as to regularity. In the latter case where much reliance had been placed upon the much discussed case of *Norwood vs. Baker*, 172 U. S. 269, the court says, referring to the law of 1893: "This court has said that the statute meant assessment for benefits, and that practically makes the statute mean it." The court further held that, the assessment having been made in conformity with such act, it would be sustained, notwithstanding such assessment may have been made on a front-footage basis.

In many instances, enough money was not raised from the assessments or re-assessments through the neglect of city officials to pay the warrants delivered to the contractor, and the holders of these warrants, in many suits brought between 1893 and 1898, sought to make the city liable. It is my purpose to consider the decisions rendered in these cases at some length, as they illustrate the growing tendency of the courts to strain a point to protect public interests; and also because they illustrate the danger with which members of the bar have to contend in placing too much reliance upon decisions involving a legal principle, which may not have been presented in all its different phases.

I desire again in this connection to call attention to the conditions existing when these obligations were incurred, as they may in a measure explain the determination ultimately reached to hold that the city is not liable. A large part of these improvements were made in the heyday of our prosperity, when the feeling prevailed that these expenditures were striking evidences of our prosperity which would appeal to outside investors. Labor was in great demand at high prices, materials were correspondingly dear; but what mattered the expense so long as one could buy today and sell tomorrow at an advance? The bubble burst, a strong ebb tide set in, money which had been steadily coming from the east began to flow in the opposite direction, and so continued until there was no longer any to send in

obedience to calls made. Cities had been no less extravagant than individuals; most of them had reached the limit of indebtedness; in many cases the assessments against property for street improvement equaled the price at which property could be sold. A loss had to be met by some one. Who should suffer it, the city or the warrant holders? It was when this condition of affairs existed that the courts were called upon to determine as to the city's liability, whether through the neglect of its officers and agents the fund to pay these outstanding obligations could not be raised from the property owners. Let us, for a moment, look at the relation of the parties to the contract. The contractor on his part agrees to do the work and furnish the materials specified in the contract, according to its terms and to the satisfaction of the city. The city on its part agrees to pay for the same by issuing warrants drawn against the special fund. In some contracts it was provided that, in consideration of such payment by warrants, the contractor waived the right to demand payment in any other way. Some contracts contained the further provision that the city would proceed as soon as its laws provide to levy and collect a special tax; but it has been held that such provision does not add force to the contract, as it is only an agreement to perform a plain duty. The city charters provide the machinery and map out the steps to be taken by the officers to provide the fund. These officers, and they alone, can make use of this machinery. The contractor cannot, with few exceptions, in this state himself foreclose the assessment, as he is empowered to do in California and some other states. The contractor fulfills his part of the contract in a manner acceptable to the city. The city, through the neglect of its officers, fails to perform on its part, and in consequence there is a loss.

The decisions upon the question of the city's liability have not been uniform, and precedent can be found for holding either way in decisions rendered by the courts of sister states. It is not the purpose of this paper to maintain by argument and citation of authority, that the city should or should not be held liable, although it appears to me that the strongest arguments have been made in favor of such liability. My purpose is to point out the position taken by our courts at different times, and the reasons which seem to have been controlling in the conclusion finally reached. The earlier decisions led to the belief that when a proper showing of negligence should be made the city would be held liable. *Soule vs. Seattle*, 6 Wash. 315, the first case involving this issue, was an action in equity in which the holder of street assessment warrants sought to hold the city liable. It was held by the court that he had mistaken his remedy—that by mandamus he could compel the city officers to raise the necessary funds. The

court further called attention to the fact that the action was founded on contract. Subsequent actions were based on the negligence of the city officers. Coming to the question of the city's liability on the ground of negligence, the court in its opinion says, "We leave it entirely an open question whether municipalities may not under different circumstances make themselves liable by omissions of the character presented here." The next case to be heard, *Stephens vs. Spokane*, 11 Wash. 41, was an action brought by a warrant holder, in which he sought to recover against the city on the ground of negligence for failing to take the steps necessary to raise the special fund, the contract having provided that, if any payments became due and said fund had not been raised, the city would issue its warrants redeemable within one year. Demurrer to the complaint was sustained. The Supreme Court, reversing this decision, said in its opinion: "If the contract was duly made and no steps have been taken for five years on the part of the city to collect the necessary funds the plaintiff has a legal grievance." When the case was heard on its merits, it was decided that there was no negligence on the part of the city. When the matter was again called to the court's attention in *McEwan vs. Spokane*, 16 Wash. 212, the right to recover on the ground of negligence was recognized, the court saying that "It clearly appears that the city has not exercised ordinary diligence in making preparation for payment of the warrants." In *Bank vs. Port Townsend*, 16 Wash. 450, the decision pointed in the same direction. After these decisions, suits against cities multiplied. There being some conflict in decisions rendered, and some doubt in the minds of the profession as to the position of the court it sought, in deciding *German American Savings Bank vs. Spokane*, 17 Wash. 315, to resolve these doubts. This case, because of the exhaustive opinion written and full discussion of the subject, demands more than passing attention. The opinion starts out with the statement that many cities and towns in the state are heavily burdened with debt aside from street warrants; that there is a large amount of this class of paper outstanding, and that therefore the question is one of the utmost importance—in which statement we may perhaps discover the reason which impelled the court to reach the legal conclusion announced in later cases. The action was brought by the holder of street warrants, and was founded on the negligence of the city officers in not providing a fund to pay the warrants. The opinion declared that the following propositions were settled: First, that there can be no liability when the city has reached its limit of indebtedness; second, that there can be no liability when there was no authority in the first instance to construct the improvement out of the general fund. The writer of

the opinion then took up the question of liability where there had been unreasonable delay in collecting the special assessment, reviewing decisions from other states, citing cases from New York, Kansas, Oregon, Illinois, Iowa, Kentucky and Wisconsin sustaining the city liability, and cases from Indiana, Missouri and New Jersey sustaining the theory of non-liability. Decisions from other states giving partial support to the theory of non-liability were also cited. The reason for not holding the city liable in the case under consideration is to be found in the statement made that, "As a matter of right and law where one or two parties must suffer, the loss should fall upon the one who has the best opportunity to protect himself and is most at fault," followed by an argument that, if the city is to be held liable, the burden falls upon the general taxpayer, who is in a helpless condition while the contractor enters into the agreement voluntarily and with his eyes wide open—which argument might be answered by the statement that the general taxpayer selects his agents and makes the law under which the assessments are made.

The contractor may well be held responsible for all acts done before the contract is entered into; but it would seem that he has an absolute right to rely upon the performance of duties to be performed at that time by the officers of the city, inasmuch as he has no control over such acts. However, as has been before stated, it is not the purpose of this paper to argue for or against the city's liability; but simply to show the position taken by the court from time to time and the reasons given for such opinions. The opinion still left unsettled the important question as to the city's liability where, through the negligence of its officers, the power to collect the assessment has been lost. Referring to which, the court says: "No case has yet been presented to us so far involving the right to recover of the city where the power to enforce the assessment has been lost." The opinion further states, "It has been intimated that the city might be held liable where its officers had been fully moved, and had failed in such instances." It is further stated that "We desire to regard the express point above mentioned as not definitely settled, or passed upon here." These latter expressions of the court strike one as somewhat peculiar in the light of subsequent decisions where this express point was raised. In *Wilson vs. Aberdeen*, 19 Wash. 89, the court decided that admitting that the remedy against the property holders was lost, the city would not be liable, intimating that this point had been virtually decided in the *German American Savings Bank* case, when as a matter of fact it was left as a moot question in that decision. Again, in *Rhode Island Mortgage Co. vs. Spokane*, 19 Wash. 616, it was held that a complaint alleging that the city has failed and neglected to lev-

any assessment and has exhausted its power to do so did not state a cause of action; and again, intimating that this very point had been decided in the German American Savings Bank case. The opinion in this case would seem to hold that, in no event, can the city be held liable where the improvement was constructed under the assessment plan against property benefited. It would therefore seem to be settled that in this state there can be no liability on the part of the city, arising or growing out of the neglect of the city officers to take the steps necessary to provide a fund to pay street warrants. When other cases involving negligence on the part of the city have been before the court it has gone to the full length in holding it responsible. An illustration of this is found in the decision recently rendered in *Jordan vs. Seattle*, 26 Wash. 61, where judgment was asked against the city for injuries received from a defective sidewalk, with which defect plaintiff was perfectly familiar, having warned her children of such danger. The lower court granted a non-suit on the ground of contributory negligence. Reversing which judgment, the court held that the question of contributory negligence in this case was for the jury.

Reviewing these decisions, it becomes apparent that, when the question of the city's liability was first presented, there was a disposition to hold that the city would be liable, if through the neglect of its officers the assessment could not be collected; that later judgment of the court was modified, so as to hold that no recovery could be had against the city, while the assessment plan could be followed in any way; and that finally it was decided that no recovery could be had against the city when improvements were undertaken, to be paid for by assessments upon the property benefited. It should be stated, however, that the court directed the city officers to perform their duties, and make re-assessments by mandamus in almost every case when application was made, and that such re-assessments have in almost every instance been sustained.

One cannot, in following the decisions rendered, escape the conviction that the doctrine of expediency largely influenced the court in finally reaching the conclusion that it would not hold the city liable in any event, upon the ground of negligence of its officers in the performance of plain ministerial duties, and that it based its decision largely upon the ground that to hold the city liable would cast a heavy burden upon debt-ridden municipal corporations.

The query naturally suggests itself, as to whether courts in deciding questions presented should be at all influenced by public interests, or whether they should at all times hew close to the line of precedent. Upon this question there will be wide divergence of opinion so long

as men are constituted as they now are—some conservative and closely wedded to past constructions of the law, others imbued with a spirit of liberality which would bend the law to meet exigencies that arise from time to time.

When there is a deep-seated change in the public mind regarding any matter of public interest, it finds expression in legislative enactment embodying such change. Aside from these statutory changes we find that the law is undergoing a slow process of change brought about by construction, induced largely by the changes wrought in public sentiment. It represents a phase of the evolution of law. This growing disposition to give heed to the interests of the public, and this endeavor on the part of the courts to do justice in individual cases and free themselves from the restraints of former rulings may be noted, not only in decisions rendered by state courts, but Federal judges have in several instances departed from well defined canons of construction when great public interests were at stake. The danger in such departure is that decisions based upon such considerations act like a boomerang; they come back to trouble the courts in later decisions when the same principles of law are involved; and moreover, they create a feeling of uncertainty in the minds of the legal profession.

It has been my purpose to demonstrate that law is not, and cannot of necessity be, an exact science; that the lawyer, in addition to thorough knowledge of adjudged cases, must acquaint himself with the general trend of public thought. He must familiarize himself with conditions that will influence the courts in their attempts to adjust and determine the rights of parties litigant, bearing in mind that it is the highest purpose of the law to work out ultimate justice between parties, and that its rules and regulations are adapted to this end.

THE USE AND ABUSE OF THE LABOR UNION.

By L. Frank Brown, of Seattle.

I rejoice in the opportunity to present sympathetically to my profession some of the cardinal uses and abuses of the labor union. In this mighty class struggle, representing a million men, our profession should ever stand as interpreters, beacon lights warning the body politic of the perils and blessings of such a movement. We must ever be the sentinels permitting to pass what is right, and prohibiting what is wrong, and educating the public into a truer conception of the relationship of this great labor movement toward society.

As a profession, ever noted for developing civil and religious liberty, ever struggling for the right against the wrong, we have given too little thought to this modern development of industrial democracy.

The experience of that keen, judicial temperament, that wealthy man, Thorold Rogers, is a common one. In his "Work for Wages" he says of labor unions:

"I confess to having at one time viewed them suspiciously, but a long study of the history of labor unions convinced me that they are not only the best friends of workingmen but the best agencies for the employer and the business; and that to the advantage of these associations political economists and statesmen must look for the solution of some of the most pressing and most difficult problems of our time."

That matchless scholar who has done more in America to develop sane views between capital and labor, and to make the educated classes believe that their interests are reciprocal, Prof. Ely, in that helpful book, "The Labor Movement in America," says:

"Their cause is so strong that for a man in a non-partisanship business to oppose them is *prima facie* evidence of ignorance. Among political economists it is no longer necessary to vindicate their usefulness, for they almost unanimously favor them."

Prof. John Graham Brooks, in that balanced sympathetic book of his, "The Social Unrest," says:

"No one can study the growth of the labor union in every country where capitalistic organization within ten years has made its great

stride without seeing that the new ambitions and successes of unionism are probably as great an event socially and industrially as the trusts.' The least astute must now see that the trade union has wholly won a strength that is neither to be ignored nor too much affronted. The puerile cry to 'down the trusts' is only matched for senselessness by the cry to down the trade union. Both attempts through organization to check certain evils which an unrelenting competition at last produces. Both equally must be accepted for their uses."

In the case of each class, as a profession, we have to remember the oldest and hardest lesson, to distinguish between use and abuse. Is federated capital fewer abuses than federated labor? The abuses of the labor union are far more open. They appear on the surface to violate more impudently social uses by which we set great store, but if both trusts and union could have impartial analysis there is no social good that would not be found to suffer in deeper and more dangerous ways from the abuses of certain capitalistic organizations than from those of labor. The problem is to check and eliminate the abuses of both. Legal procedure will play an indispensable part in this, and has played in the past an indispensable part, but education will play a weightier part still.

I have seen an extremely decorous group of persons listen unshocked to the story of a corporation which had for years systematically debauched the local legislature and with cool deliberation brought small independent firms to ruin. It was said, "Oh, but the corporations must do it to avoid blackmail; and as for ruining other people's business, that is only the law of progress."

When this same company heard an architect tell of the slugging of a non-union man, there was an instant spasm of moral exasperation. For a perversity of unfairness like this, the one need is light and large experience. The embittered workman is often as fantastic about his unfairness. The story of a "heaved brick" at the "scab" shocked him as these prosperous diners were shocked by the greater sins of the corporation. There is little hope save in educational processes that enlarge the perspective of both.

Kindly understand that the parallels are not justifications in themselves, but if the practice is wrong they do prove that our entire industrial system needs reformation, and it is unjust to put all the blame upon the labor union.

The first great use of the labor union is the industrial democracy which is being developed. The time has gone by when labor can be regarded as a commodity to be bought and sold like any other product.

duct, for you are dealing with human peculiarities which distinguish it from other products in this:

First. The actual inequality between the two parties to the labor contract and the one-sided determination of the price and conditions of labor.

Second. The almost unreigned control of the employer over the social and political life, the physical and spiritual existence and the expenditure of his employee.

Third. The uncertainty of existence which, more than actual difference in possession, distinguishes the man of comfort from the man of poverty.

The labor union is passing through the same shock and roar of battle that religious and political institutions have passed through to gain their well-earned liberty of action, and as Hon. Abram S. Hewitt, the wealthy New York employer, has so well said: "It is only as labor is organized that the contending parties are in a condition to treat. It is not to be disguised that until labor presented itself in such an attitude as to compel a hearing, capital was not willing to listen, but now it does listen. The results already attained are full of encouragement."

This industrial democracy is what the employer calls "interfering with my business." He expects sympathy when he asks, "Shall I manage my own business or not?" Yes, he shall manage his own business, but precisely what his own business is calls for a new definition under this first great use of the labor union, namely, its industrial democracy. It is here organized labor is carrying on its useful struggle. It is trying to determine what in the business should be decided by labor and what by the employer.

Where the trade union has become fair it knows and admits that the employer must have absolute and instant control over all that strictly concerns him as managing director.

Mr. John Burnett, the famous secretary of the building trades of England, testifies:

"The condition of the workers never was improved until after the era of trades unions; and all their improvements, whether in wages or better conditions of working, has gone on step by step with the extension and adoption of trades union principles."

In other words, by bringing in the element of industrial democracy that has forced the employer to treat with them upon equal terms of opportunity. But says a Seattle or Tacoma builder, angered by delays upon his structure, if it were not for the union I could finish it in two-thirds of the time—I could get ten hours a day out of them, and I could get them \$1.50 cheaper. I could bring in the young fel-

low from the country and everything would "hum." Yes, this is precisely what he could do. He would have greater speed, cheaper product and fewer annoyances, but it would all be at the expense of that higher standard of labor for which the unions are making this desperate struggle. The cause of labor is their cause.

The annoyances under which builders and architects, for example, suffer is the price we have to pay for a more democratic form of industry that somewhere in the future must come unless every idea of a more equal life is to be given up. This passion should be recommended for the use to which it can be put, rather than for the abuse to which it may have been turned. The way of safety is to educate the way of danger is to deride and defeat it. Why, members of my profession, it is the same old cry of divine right of kings, transferred to divine rights of captains of industry; there is so little democratic machinery to clog the will of the one man power, but in political democracy, after two centuries of struggle, we all now admit that it is better to have abuses under the "slow freight" development of democratic institutions than abuses of power under the "lightning express" development of monarchy. Better, in other words, to trust the tyranny coming through a million men than through one. Better to trust the tyranny of the majority than the tyranny of a Nero.

The mechanism of this industrial democracy, the joint agreement, is already in use and the education has begun. It is among printers, the longshoremen, the soft coal miners, the iron moulders and the Boston carpenters. While the joint agreement has had its severest test among the low class of miners of the soft coal region, yet that the agreement should have worked so long among the rough and untrained men is, perhaps, the greatest tribute to its fulfillment of promises. The real irritation of the employer is that his old power of absolute decision is now called in question. In the long period of dictatorship is now coming to an end the employer has been dictator not only of his own business but of interests which concerned his workmen as well. The laborer has now entered the fight to divide this authority. He insists upon taking his part in the discussions as to hours, wages and conditions which are strictly his business also.

This first great use of the labor union in its march toward industrial democracy, responsibility by a joint agreement, will be enforced by a growing business sentiment, and by the enlargement of the equitable principle of specific performance in our equity jurisprudence.

"Fighting it out" is one resource, but it is stupid and objectionable. The joint agreement, practically adapted to each business after its nature and conditions, is not free from perplexities, but every step in its application and enforcement educates in the only possible direction

which industry must move, if it moves in the way of progress. There is no ray of hope except in some method that forces the two parties to work more and more together, instead of more and more apart. There is nowhere a substitute for this compelling common action that teaches the employer what is just, possible and right in the new claims of labor, and teaches labor the difficulties and the limitations within which modern business can be made a success.

The evidence is overwhelming that the joint agreement is a present help in this time of trouble. If only employers will bring to it something of their real strength and sympathy. It gives us arbitration in its very highest form, that is from within. It gives it in the one way to secure entire enlightened evidence in this: That it educates this mighty force to keep agreements voluntarily, which is a much higher plan than to do it under force.

There is no such convincing proof of this as the fifteen years' trial between masters and men in the Boston buildings trade. W. H. Sayward, who brought about this agreement, speaking from the side of the employers, says:

"My experience has convinced me that labor thoroughly organized and honestly recognized is even more important for the employer than for the workmen. It makes possible a working method between the two parties which removes one by one the most dangerous elements of conflict and misunderstanding."

In an address before the National Association of Builders, Mr. Sayward criticises the employers for saying that they will not treat with the unions until they are improved. "This," he says, "is like asking the child to swim, but not to go near the water." The employer must take part in this educational work as a very condition of its success. In closing this address Mr. Sayward said, "that either for the building trades or other lines of work, these intricate and involved matters will not take care of themselves; they cannot safely be intrusted to one of the interested parties alone; both parties must have equal concern, must act jointly, not only in their own interests, but in the interests of the community."

For that trouble-breeding portion of industry here discussed, the joint agreement is all that any "solution" can be, namely, the next best practical step toward a rational industrial method. These agreements are not of universal application. They apply at points where unionism is inevitable; where the wage system is under such strain as to require modification in the direction of a more democratized management. Every scheme that is not inherently educational is worthless, because the clash of the trust and the trade union is raising new issues for which an enlarged social morality is necessary.

Benj. Kidd, in that latest book, "Western Civilization," brings ideas of politics and economics into one great category. "As politics the movement has been toward equal political rights, in industrial economics it is now a movement toward equality of economic opportunity; and that great ethical postulate of Prof. S. Wick approves of this first great use of organized labor in producing industrial democracy when he says 'that the distribution of wealth in a well ordered state should aim at realizing political and industrial justice.'" This conscious identifying of political and industrial ideas is a dangerous ferment for certain vested interests, but if treated sympathetically by us, as educated men, with a realization that the political and industrial ideals must not be left to one class, but both, then we will rise on "stepping stones of our dead selves to higher things."

II. The labor union enables the laborer to withhold his commodity temporarily from the market, and to wait for more satisfactory conditions of service than it is possible for him to secure when he is obliged to offer it unconditionally. It further enables him to take the advantages of an increased demand for his commodity, to bring about a more satisfactory relation than would otherwise be possible between the supply and the demand for labor, and also to exercise an influence upon the supply in the future market. These organizations are calculated to do away with the injurious consequences of the peculiarities of labor as a commodity to be sold, and "through the labor for the first time becomes really a commodity, and the laborer a man."

III. The labor unions and other agencies of the labor movement such as the labor press, assist the laborer to find the best market for his commodity; and as the best market usually means the most productive market considered from a politico-economic standpoint, this is of benefit to society as a whole. There are several ways in which this is done. The organs of the trades unions and other labor newspapers, publish statistics concerning the state of trade in various localities. Laborers are informed, for example, that there is plenty of work for printers in Boston, but little in New York; that the building trades are rather active in Seattle, but dull in Tacoma.

IV. Labor unions are wisely learning not to ask for an increase of wages with every temporary improvement in business, but rather to use it to secure other concessions, and to ask for higher wages only at comparatively rare intervals. Their aim is to secure the conditions of a slow, sure and steady growth.

"I do not hesitate," writes Mills in his "Political Economy," to say that associations of laborers, of a nature similar to trades unions

are far from being a hindrance to a free market but are an indispensable means of making the seller of labor to take due care of their own interests under a system of competition."

V. There is an ulterior consideration of much importance, to which attention was for the first time drawn by Prof. Fawcett in an article in the *Westminster Review*.

"Experience has at length enabled the more intelligent trades to take a tolerable correct measure of the circumstances on which the success of a strike for an advance of wages depends. The workmen are now nearly as well informed as the master, of the state of the market for his commodities; they can calculate his gains and expenses; they know when his trade is or is not prosperous, and only when it is, are they ever again likely to strike for higher wages; for which wages their known readiness to strike makes their employers for the most part willing to concede. The tendency, therefore, of this state of things is to make a rise of wages in any particular trade, usually consequent upon a rise of profit, which, as Mr. Fawcett observes, is a commencement of that regular participation of the laborer in the profits derived from their labor, every tendency to which, it is so important to encourage, since to it we have chiefly to look for any radical improvement in the social and economical relations between labor and capital. Strikes, therefore, and the trade societies which render strikes possible, are for these various reasons not a mischievous, but, on the contrary, a valuable part of the existing machinery of society."

The educational uses of labor unions should be emphasized.

I. They do the same kind of work that is done by the great federal social units all over the world. The members pay a certain sum weekly and are entitled to receive when sick or disabled or out of work certain weekly relief. In England this is a very important function of trade unionism; and I think this point should be more highly emphasized in the unions than it is in America, for the English workmen seem chiefly to value the union on this account. This feature of the work is certainly one of great value. Such benefit funds can be more wisely administered between workmen of a single trade who are closely associated and well acquainted, than by persons less familiarly allied in their interest.

II. The labor unions also endeavor to secure, to some extent, improved conditions of health, comfort and safety for their work. It is true that in the early days, when the bitter conflicts between the unions and the masters were in progress, the workmen themselves resisted, with melancholy fatuity the benevolent efforts of some employers to improve the sanitary conditions of the mills and factories.

The fact was that they were simply mad; reason had departed from them; their hostility to their employer had become a kind of insanity; they fought him at every turn, and seemed bound to believe that every act which he performed was dictated by enmity to them. But they have recovered from that craze long ago; and they are now not only ready to accept such overtures, but to look out for their own health and comfort and safety. That this is a legitimate object, nobody will deny.

III. The labor unions are all free parliaments, and the discipline of debate is very stimulating. One must regret, indeed, that partial views and one-sided theories are quite too apt to gain currency—perhaps no more so than in boards of trade and clubs of professional men. One often hears views put forward with great clearness and vigor which are just about half true, and which provoke the admonition of the American humorist: "Young man, it would be better for you not to know so much than to know so many things that ain't so." One often feels the force of Mr. Rosanquet's keen saying, that the error of the man who thinks he knows it is more dangerous than the ignorance of the man who knows nothing.

IV. The last great use of the labor union is its check upon modern radical socialism, if we do not attempt to suppress, beat and discourage it. Every union that is beaten or discouraged in its struggle is ripe for fruit for such socialism. Let unionism receive from capital a severe and damaging blow and this radical socialism will bear henceforth not a foreign but a distinctive American stamp. Kindly understand, I believe in a socialism that says to the individual or corporation, "If you abuse your powers which I have given you, I, the centralized power, will take away your privileges and exercise them myself;" but if before this is made necessary, capital and labor can get together in a joint agreement, free from the power of centralized government. I believe it to be better for the interests of our common country and is more conducive to industrial democracy. That which teaches a union that it cannot succeed as a union, turns it toward radical socialism. In other words, if the million men who now compose organized labor find that by due process of equal and impartial discussion of their rights with their employers they cannot find justice, is it not fair to presume that they will turn to that method of adjusting their rights—the ballot box—and in the hand of the demagogue and the political charlatan will be taught that dangerous lesson that is dangerous in their hands, that if you cannot obtain your rights with the man who employs you and better your condition, you can obtain them through the ballot box, under the centralizing power in the government. Will it not result in producing greater tyranny toward the conservative

interests of our country, and will not graver abuses arise therefrom, than by encouraging them to realize that they have a great and equal part to play in the complicated life of today, and make them realize that while the interest of labor and capital are not identical they are reciprocal?

But you have given a bright picture of labor organizations, says someone. The frailties and offenses of labor organizations ought to be stated. They are as real as any upon the side of capital, even if there is more excuse for them. The sin and the weakness of the labor union has been:

- I. In its attitude toward convict labor.
- II. In its attitude toward the non-union man.
- III. In its sullen aversion to new inventions.
- IV. In its tendency to discourage the best endeavor among the better and stronger workers.
- V. In its too free use of the sympathetic strike.
- VI. In a far too reckless use of the boycott.
- VII. In its abuse by its business agent, and its abuse of the rights of the public.

Prof. Brooks, in presenting the social unrest of our time:

"The average union is guilty in the case of part of them, but the best and strongest unions have already risen pretty clearly and cleanly above them all. Enemies of the unions are fond of telling us that 'if all unions were like the locomotive engineers, business interests would be safe.' Yes, but that is what this body of workmen has slowly reached. Its early history is black enough. Other unions have grown safe only through experience and responsibilities.' The advance guard of unionism is at the present moment in the United States one of the most conservative influences active among us. After life-long familiarity with the trade union, Commissioner C. D. Wright states that 'as a rule trade unions oppose strikes;' that they 'are growing more and more conservative.' 'As a rule they are friendly to machinery.'

Samuel Gompers, in the American Federationist, says:

"We are as mindful as any one can be of any faults of or mistakes made by the trade unions. We are cognizant of the fact that the trade unions are not, any more than any other human institution on earth, infallible; but there are less of these faults and fewer mistakes made now than has heretofore been the case. The growth in membership, the permanency of the movement, the cohesion of the men of labor, the exchange of opinions in the discussions in the meeting rooms of the unions in the important questions of life, the struggles that are made and the sacrifices that are borne benefit all, and have made



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workingmen the best informed of any of our people. And as time goes on, with the further organization and the experience, more victories are achieved. With the shorter workday, higher wages, better conditions, and more opportunities labor will continue to grow in power and influence, and will be potent for still greater good in the uplifting of humanity."

Prof. Webb, in that wonderful book, "Industrial Democracy," which bears to the industrial world the same relation that "De Tocqueville's Democracy" bears to political institutions, says:

"The economist and the statesman will judge trade unionism, not by its results in improving the position of a particular section of workmen at a particular time, but by its effects on the permanent efficiency of the nation. If any of the methods and regulations of trade unionism result in the choice of less efficient factors of production than would otherwise have been used; if they compel the adoption of a lower type of organization than would have prevailed without them, and especially if they tend to lessen the capacity or degrade the character of either manual labor or brainworker, that part of trade unionism, however advantageous it may seem to particular sections of workmen, will stand condemned."

This quotation must ever be kept in mind in dealing with this great class struggle, and particularly the first indictment that I have mentioned, its objection to convict labor.

IN ITS ATTITUDE TOWARD CONVICT LABOR.

With respect to this their view is narrow and unsocial; and the intelligent men among them ought to cultivate a better sentiment. Anyone who sees, what may be seen any day in our state penitentiaries, six or seven hundred men sitting all day in the idle house, condemned to indolence and mental and moral stagnation, can have but little patience with this petty policy. The entire prison product would amount to not more than one-fifth of one per cent. of the total production; the reduction of wages due to it, if evenly distributed, would amount, in the case of a man receiving two dollars a day, to one-fifth of one cent per diem; and I think that the workingmen of this country can risk this financial loss rather than permit the horrible social injury which must result from keeping thousands of men confined for years in absolute idleness. Every such man, when discharged from confinement, is certain to be found more dangerous to society than when he was sent to prison.

IN ITS ATTITUDE TOWARD THE NON-UNION MAN.

The sober words of Prof. Bascom set this vexed matter in the true light:

"In the best organized trades, hardly half the workmen in a given

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occupation belong to them. A certain class of self-reliant independent workmen prefer to remain aloof. For them the union means a sacrifice. A large number of careless and indifferent workmen fail to unite. In good times they do not feel the need of aid; in bad times the unions are unwilling to receive them. It is impossible that hostility should not spring up between union and non-union men. Union men always in their own eyes, and often in fact, are contending for the common cause; non-union men not only do not contribute to this effect, they often make it feeble by blind competition. When a strike is in progress attended by much competition, and non-union men accept the rejected service, they are taking labor they have not themselves secured, and by doing so are aiding to bring about a reduction of wages. Human life, in all its trying experiences, hardly offers another case more provocative of bitter feelings. The case is one in which the plea of industrial liberty is brought in a deceptive way against social progress. The hostility is like that which in our own revolution was felt against those who would not take part in it. The individual, in a general movement for the public welfare, must concede something of his own personal liberty. A constraining, organic force gets hold of him and he must respond."

Washington Gladden, the scholarly, ethical and religious teacher, says in reference to Prof. Bascom's statement:

"I am sure that all large minded men can feel the force of this statement. Yet it must be observed that this logic only holds good so long as the industrial world remains on what is practically a war basis, so long as there is a sharp discrimination and conflict of interest between labor and capital. It is not exactly 'a general movement for the public welfare,' that the strike proposes; it is a sectional movement for the welfare of a portion of society in conflict with another portion. This is what gives the 'scab' his footing. In social warfare there are generally rights to be maintained on both sides. And it is precisely because these individual strikes are often waged on the part of the unions, with slight regard for the welfare of society at large, that society at large is inclined to take the part of the scab."

Among educated folk generally there is thus far no word of defense for a single abuse connected with it, but the time has come when some honest attempt should be made to understand the force of such extraordinary persistence and prevalence.

So far as violence is concerned, I am ready to say with all emphasis that it is not to be tolerated under any circumstances. I believe that it is always the argument of weakness. I believe that the workmen can carry their point without it, whenever they are in the right, and when they resort to it they are always the losers. Yet I sympathise with them in their indignation against those who will not unite with them



in their lawful and peaceful attempt to secure better conditions.

Prof. Brooks, under this head, states:

"There are now men in our cities whose business it is to hire themselves out as 'strike breakers.' Asking no question as to the right or wrong of the strike, they are ready to go hither and yon, to take the places of other men. I have seen miners who had learned from those inside the mine that those who had taken their places were brought from a city outside the coal regions where they were regularly employed. It is a terrible strain upon average human nature to look upon this with the coolness and self-restraint of the disinterested observer. In spite of the provocation, personal violence should be met with the swiftest stroke consistent with justice. Scarcely a value of our civilization equals that of law and order. But the real rights of these miners are not settled in this instance, after the law has done its work."

This question is not settled. Morally, and on grounds of good policy, we have still to meet this issue of the non-union man in time of strike. No generalization is yet possible, but when men have been expressly encouraged by a company to buy their homes, non-union men should not be brought in to break the strike until every fair recourse of arbitration has been exhausted, even if it drives us to compulsory arbitration. To refuse arbitration and then hire private retainers of the Pinkerton type, will not long be tolerated by a fair public. The joint agreement avoids them. Under its provisions work is not stopped until the forces of arbitration have done their work.

Men of this association, we must judge an organization by its best rather than its worst element under this indictment, and listen to the words of Mr. Sargent, of the Firemen's Union. "When strikes are declared the men should go home and stay there. If any men can be secured to take their places let them take them. In the past there has been too much coercion and too little instruction and education along these lines."

Mr. Gompers, John Mitchell and Harry White give in the same strong testimony as to the purpose of educating their followers up to broader and sounder principles. In the "Garment Worker" of November 22, 1902, there is this editorial dealing with this indictment:

"Browbeating or violence on their part cannot be defended. Where that is resorted to the ethical purpose of the movement becomes obscure, and hatreds are engendered that offset the brotherly spirit upon which it is founded. No matter how serious the evils to be combatted, barbarism cannot be overcome by more barbarism. If the benefits of the union cannot be made apparent to the non-member, and

if the influence which they can exert collectively is insufficient to induce him to join, then their cause has little strength."

It is the "joint agreement" between employer and employed which involves complete recognition of labor organization. Contracts have to be made periodically between delegated committees as to wages and all important conditions under which the work is done. It involves systematized arbitration not from without but from within. It puts every natural difficulty in the way of the strike. It involves organized discussions between masters and men on every interest that concerns their common occupation.

IN ITS TENDENCY TO DISCOURAGE THE BEST ENDEAVORS AMONG THE BETTER AND STRONGER WORKERS

Under this indictment of restricting the output of work and workers it is only fair to say that many of the most influential labor unions have grown into larger views than they can enforce upon their followers. They are often helpless before the impulsive action of some local union. They are forced to be as politic as a "dynamic clergyman with a static congregation." Too many of the workmen are yet not enlightened enough to take the larger views. The men seem to be under the impression that there is only so much work to be done and they want to stretch it out.

And as Carroll D. Wright, in that thoughtful book, "Practical Sociology," says:

"It must begin to be recognized that when a reduction in the earning of the employee seems necessary he has just as much right to be informed of the conditions requiring a change as the stockholder has to be informed of the conditions which necessitate a reduction or a passing by, or a dividend for the employee jeopardizes in the joint enterprises his only capital, namely, his capacity to work for his day labor as much as the capitalist jeopardizes his accumulations invested in the same enterprise. Each is interested in preserving stable conditions of production so that the roads of each may be kept stable or increased. This involves the whole ethical relation of employer and employee, but it leads to that suspicious attitude which is the curse between capital and labor."

I believe that this abuse is fast receding in the intelligent unions. Time limits me in developing the abuse of the sullen aversion to new inventions and the willing assent to check the output of work and in its tendency to discourage the best endeavors among the better and stronger workers. All such policies are suicidal and in my judgment are but incidental in the struggle for improvement in the labor unions of the country.

These different actions of the labor union to meet the competing

forces that endanger its common life is at least as intelligent as the tariff or the limitation of output by a great corporation. This check upon competition in the labor union is a superior morality as compared with that large part of business which use the tariff to sell our products to foreign competitors twenty per cent. cheaper than to our own people; and the idea of not developing the individuality of its membership by placing everyone under a common measurement and mould is but following out the elementary principle of our own public school system in realizing that the world advances not so much by the great achievements of great men, but by the quiet, unostentatious lives of the middle classes of society.

The laboring man must realize that as wages are raised new and better machinery must be introduced in order to lessen the cost of production, and only as the individual man is permitted to develop his highest possibilities in the trade union, as well as out of it, can the union hope to reach its highest possibilities.

TOO FREE USE OF THE SYMPATHETIC STRIKE.

I would I might go into the field of the relation of law to the labor union, in the sympathetic strike, but I shall give this profession the violent presumption of knowledge along that line and refer simply to the "Handbook of the Labor Law of the U. S., and Law in Its Relation to Labor," by F. J. Stimson, wherein he shows that the whole development of the law of the sympathetic strike is contrary to our jurisprudence.

The case of *Arthur vs. Oaks*, 63 Fed. Rep. 310, and *Mapstrick vs. Range*, 9 Neb. 390, are the leading and first American cases squarely in point and teach us the fundamental principle that while employees have a legal right to strike for their own benefit, to raise their own wages or seek improved conditions of employment, there is always a question in law, as well as in morals, whether they have a right to strike for no purpose but merely out of malice against the employer, for the purpose of inducing the employer to yield to the demands of some to the benefit or benefits of some different strike. The whole tendency of the courts is to emphasize the lesson that the members of the labor unions need to learn, namely, the solidarity of human interest, and that when the special interest which they are seeking to advance comes in conflict with the larger public interest then their special interest must give way; "and thus far and no further shalt thou go" is the righteous and just interpretation of the law. I believe this principle to be founded in economics, statesmanship and jurisprudence, and I am rejoiced to find that the sentiment of unionism itself is in this direction. Nearly one-half of the strikes in the last century are

put down by Col. Wright as successful, but the "sympathetic strike" proper, he says, is an almost uninterrupted story of defeat.

The whole theory of the federal decisions on the question of the sympathetic strike and the boycott is based upon the fundamental principle of our government that any and every private right of the individual citizen must submit to be curtailed and even abolished if in its exercise it is likely to result in injury to the public. The Federal Judiciary has stood like a "Rock of Gibraltar" emphasizing this great truth, "*salus populi suprema est*," and against its firm stand the passion of organized effort has beaten in vain in its cry of "government by injunction." It is not government by injunction in its final analysis; it is the government of the people, by the people and for the people, and all of them, and not a portion of them, for which our U. S. Judges have stood. I glory in their steadfastness to this great fundamental principle of all government.

As the Central Law Journal says in an able editorial:

"If a sovereign state can be restrained from passing any act, which even remotely affects interstate commerce, why cannot a labor union, which is the mere creature of the state, be enjoined from the commission of an act, which in a most direct and injurious manner interferes with interstate commerce? Indeed, what greater interference with interstate commerce can be conceived of than the action of the officers of a labor union in calling a general sympathetic strike on all the railroads of the country, as was done in Chicago in 1894, thus tying up commerce and stagnating business throughout the nation?"

In warning the soft coal miners in 1902, John Mitchell told his hearers he had never known a sympathetic strike to succeed. Labor unionism at its best has so far discovered the great fact of the solidarity of interest that it may easily be led to co-operate rather than antagonize.

The Labor Clarion, of San Francisco, one of the ably edited papers on the Pacific Coast as given in the Coast Seamen's Journal, in the issue of July 15, 1903, which, too, has had a splendid influence upon unionism in the west, says:

"The probability of defeat should a union become involved in a strike within a few months after its organization is so strong that almost all National and International unions have adopted constitutional provisions disciplining unions that go on strikes within a certain period after their organization. The American Federation of Labor also discountenances strikes by newly formed unions. The policy of the parent bodies in this respect is the result of long and costly experience, consequently the novices in trade unionism who advocate

strikes before the ink on their charters is hardly dry are counselled to action that the men who have built up the grand movement we have today considered suicidal."

IN A FAR TOO RECKLESS USE OF THE BOYCOTT AND PICKETING.

The next grave abuse that we shall discuss is the one of a far too reckless use of the boycott. The development of the boycott in the Labor Law of America has been very decisive and very interesting and has given laboring men every right consistent with the duty which he owes to society. The leading cases, one by Judge Taft in Ohio, *State vs. Stewart*, in Vermont, and the *Debs* case, in Illinois, all develop the splendid doctrine that every man has the right to employ his talents, industry and capital as he pleases, free from the dictation of others; and if two or more persons combine to coerce his choice in this behalf, it is a criminal conspiracy. The labor and skill of the workman, be it of high or low degree, the plant of the manufacturer, the equipment of the farmer, the investments of commerce are all in equal sense property. * * * And while such conspiracies may give to the individual directly affected by them a private right of action for damages, they at the same time lay a basis for an indictment on the ground that the state itself is directly concerned in the promotion of all legitimate industries and the development of all its resources and owes the duty of protection to its citizens engaged in the exercise of their callings. The good order, peace and general prosperity of the state are directly involved in the question.

The argument for the labor union is as follows:

"A conspiracy is a combination of two or more persons to do an unlawful act or a lawful act by unlawful means. It follows that there is no conspiracy unless, either in its end or in its course, the combination is to do an unlawful act. Every man may dispose of his labor by such contract and to such persons as he pleases. He may refuse to contract with any man or class of men. If he chooses not to work for any person using materials of a certain dealer, that is his right. What he may lawfully do he may lawfully announce his intention of doing. Therefore, he may notify his possible employer of his intention not to work for any man using material of such dealer. As there are acts all within his right and lawful, he may combine with others to do them, and such combination, being only to do lawful acts is not a conspiracy and is not actionable."

But all such arguments assume two fallacious propositions:

I. That no act generally lawful, can become unlawful or actionable by reason of the motive or intent with which it is done.

II. That which is actionable when done by one person cannot be actionable or unlawful when done by a combination of persons.

"Generally speaking, if, in the exercise of such a right by one, another suffers a loss, he has no ground of action. Thus, if two merchants are in the same business in the same place and the business of the one is injured by the competition, the loss is caused by the other's pursuing his lawful right to carry on business as seems best to him: In this legitimate clash of common rights, the loss which is suffered, is *damnum absque injuria*. * * *

"But on this ground of common rights where everyone is lawfully struggling for the mastery, and where losses suffered must be borne, there are losses wilfully caused to one by another in the exercise of what otherwise would be a lawful right, from simple motives of malice. * * *

"In the exercise of common rights, like the pursuits of a business, or a trade, which result in a mutual interference and loss, such loss is a legal injury or not, according to the intent with which it has been caused and the presence or absence of malice in the person causing it * * * "

Connected with the abuse of the boycott is the idea of picketing, and the law in the United States today, as developed, is that only the most reasonable and peaceable picketing for mere purposes of information and observation is lawful, and only quiet and peaceable persuasion by workmen and conducted in such a way as not to amount to an elaborate conspiracy to prevent the employer from getting help, but picketing for the purpose of interfering with the employer's trade, as by driving away his customers, is not considered lawful under the best considered cases, and they all proceed upon the broad basis not that the courts are arrayed against the laboring men, but that noble end sought to be obtained by the union, do not justify the means used of taking away the individual freedom of any American citizen in his dealing with his fellow men, and only as the laboring man realizes that in industrial warfare no more than in religious or political warfare do good ends justify bad means, will these abuses be eliminated. More and more will he obtain the fullest and finest encouragement from his American brethren by not obtaining their encouragement and support through a compulsion brought about by a fear of destruction of business. By quiet personal work, by conservative educational processes, will the laboring man obtain results from the American public rather than through the abuses of the sympathetic strike and boycott and picketing. And, oh, if they could be made to realize that their special interest must not be considered when the interest of the public as a whole is at stake.

THE ABUSE OF THE WALKING DELEGATE.

The bugaboo of the walking delegate is regarded as a great abuse, but is sound in principle.

Those who furnish capital place its management in the hands of a few, those who furnish labor do so through a far less extent. If an indiscreet choice is made by either party the result may prove disastrous, and a change should be made as soon as possible. What Prof. Trant says of a strike is true of most affairs of trades unions. "The idea that a strike depends upon the ipse dixit of a paid agitator, and that if the men were to vote by ballot on the question, they would never consent to a strike, is conceived by those only who do not know what a trade union is. In most cases a strike is the result of action taken by the men themselves in each district, the executive having more power to prevent a strike than to initiate one." And what Prof. Kaufmann says is as true of this country as England: "I have given the subject a great deal of attention, and feel convinced that where the employers have right on their side, in the large majority of cases, the so-called demagogues or professional agitators have little power in provoking a quarrel about the raising or reduction of wages."

Prof. Ely says:

"Some people seem to believe that laborers work peacefully and contentedly until a mischievous agitator comes along and stirs them up, and creates unreasonable dissatisfaction. All this is pure fiction."

I realize that the power of the walking delegate, or the business agent, as he is legitimately called, ought to be curtailed, and that from him grave abuses have arisen in large cities. Mr. Sayard, of Boston, says he no longer opposes the walking delegate. He says he is necessary to the best work of the union. I believe that under him grave abuses have arisen, but I believe the principle is right, namely, placing responsibility in the hands of a few, in that it develops individuality and responsibility, and but follows out the theory of representative government in America, and representation in large business matters, and is but incidental rather than a necessary evil.

In closing I cannot refrain from quoting from one of the great preachers to arouse our sympathy and helpfulness to the great educational opportunity which we must bring to this great cause as professional men.

"When we remember the history of the Christian Church, the history of humanity, and by what terrific throes good evolves itself out of and through evil, we must not be too hard upon workingmen. Are we perfect? Do we commit no blunders? Are we never carried away by passion? Are we always able to balance with perfect accuracy the conflicting interests of ourselves and our fellows? * * * Remember

how labor has been oppressed. Remember that in the early days of the modern industrial revolution, labor was being reduced to slavery. Remember that these modern labor organizations, made necessary by bad conditions, and made possible by the very causes which, unhindered, made the conditions bad, were repressed with passionate violence and obstructed by malignant watchfulness. And then, with all the facts in mind, ask yourselves whether it is wonderful that there have been mistakes, mischief, crimes, much folly in principle, and much wrong in fact. Is not the wonder rather that there have not been many more of these characteristics which arouse our complaints "

Only as we bring to the discussion of this great class movement our best brain and heart power, and study the best books and periodicals by the best men on each side of the controversy, and meet in sympathetic association the best men on each side of the controversy, shall we be able to realize that love and not vengeance is the key note of the highest civilization; violence and vituperation never settle any question, and no question is settled until it is settled right, and we must never cease as a profession to place our industrial institutions on the rock foundation of righteousness; then, but not till then, will our profession, which has stood in the foreground of developing religious and political liberty, become the sympathizers, peace-makers and helpers in this great struggle of the labor union toward industrial freedom.

LIFE AND CHARACTER OF JOHN B. ALLEN.

By Thomas Burke, Seattle.

Mr. President, and Gentlemen of the State Bar Association:

I am called upon today to perform a duty of mingled sadness and pleasure. Of sadness when I recall that the one who is at this moment in all our thoughts was but yesterday, as it were, in the full flush of manhood, in the full maturity of all his powers, and that today he has disappeared from our view forever; of pleasure when I consider the clear and honorable record both in private and public life which he has left behind him as an imperishable heritage to his family and to the state.

John B. Allen was born on the 18th day of May, 1846, near the village of Crawfordsville, Indiana. He was the son of Joseph Shepard and Hannah (Beard) Allen, and was the eldest of a family of seven children. His father was a physician and surgeon of reputation, practicing his profession in Crawfordsville and the surrounding country. But, sixty years ago, the physician or the lawyer in a country village in one of the far western states, such as Indiana was then, usually found it necessary to eke out the frugal income derived from the practice of his profession by farming. Dr. Allen followed this prudent custom, buying a farm within a mile and a half of the village of Crawfordsville, upon which he made his home, and where his children were born and reared.

In 1852, when John B. Allen was seven years of age, his father was seized with the California gold fever and hurried away to the distant Pacific slope with that eager, enthusiastic throng who sought "treasures at the feet of inaccessible mountains and along those streams whose foam is amber and their gravel gold." He remained in California for a year. In the absence of the father the boy of seven, being the oldest of the family of children, soon became the chief dependence of his mother, doing the chores, running errands and helping to take care of the other children. When it became time to hear from the husband and father in California the boy was sent every week to the postoffice for the expected letter which never came; for so imperfect were the mail facilities in those days between the Pacific coast and

the states east of the Rocky Mountains that, although Dr. Allen mailed a letter home every week, not one was ever received. At the end of a year the father returned without the fortune he had sought and hoped for, and resumed the practice of his profession. After so long an absence and with a growing family it became more necessary than ever to add to the small income derived from a country practice whatever could be made by running the little farm. In those days, at least, there were no idlers among young or old on American farms, and the Allen farm proved no exception to the rule. In winter the wood chopped by the hired man at odd times during the year was hauled to town for sale by the boy of eleven; and in the summer vacations he took the place of a man in the field, plowing corn, cultivating, harrowing and doing other similar work.

In the meanwhile his education was going on at the public school of the village, and afterwards at Wabash College, where he studied for a time. When the civil war broke out the father joined the army of the Union, enlisting as a physician and surgeon in the 10th Indiana Volunteers, later on becoming acting brigade surgeon in Gen. Thomas' division. The boy, although but sixteen, felt the same patriotic impulse that moved his father to join the great army for the preservation of the Union; for, although but a boy in years, he was a man in mind and thought. But it was out of the question for both father and son to leave the wife and mother with a large family of small children to care for, so the boy had to remain. Once more this eldest son became the chief dependence of the mother, managing and working the farm and assisting in the care and education of the younger children. In 1864, at a time of great doubt and despondency throughout the country, when the waste of blood and treasure had reached appalling proportions, and when even brave men in the north had begun to despair of the Republic, young Allen felt that it was his duty at any sacrifice to respond to the President's call for additional volunteers, and against the judgment of father and mother who feared that weakened, as he was, by a severe and prolonged attack of pneumonia from which he had not fully recovered, he would be unable to stand the strain and hardships of army life, he enlisted in the 135th Indiana Volunteers. In the army as afterward in civil life every duty was faithfully and intelligently performed. He shunned no danger and shrank from no sacrifice. At the conclusion of his service in the army he received an honorable discharge and returned to his home at Crawfordsville.

In 1865, after the close of the war, Dr. Allen removed with his family to Rochester, Minnesota. There John B. Allen began the study of law under Mr. Charles C. Wilson, an eminent lawyer of that day.

Later on in the prosecution of his law studies he attended a course of lectures at the University of Michigan. In 1868 he was admitted to the bar of the state of Minnesota, and within six months thereafter was elected city attorney of the city of Rochester. Two years later, in 1870, he turned his face toward the Pacific coast and came to Washington Territory, settling first at Olympia, the capital.

In 1870 Washington Territory had a population of about twenty-four thousand. In spite of great natural advantages the growth of the territory during the succeeding ten years was not very rapid. But this is not to be wondered at when one considers that thirty years ago it was a more expensive and wearisome journey to go, for example, from New York, Boston or Chicago to Olympia, Seattle or Port Townsend than it is today to go from anywhere east of the Mississippi River to Juneau, Sitka or Skagway. The real character and resources of the territory were then but little known, and this, added to the lack of transportation facilities within the territory and between it and the east, greatly retarded its development. The principal industry of the country was lumbering. The lumber was shipped to all parts of the world in sailing vessels. As the business grew and prospered the sailing fleet coming to Puget Sound for cargoes, not only of lumber but of coal which had then begun to be mined here, naturally increased until our shipping interests by water became of considerable volume, often giving rise to important controversies that had to be settled in the courts of admiralty.

It was to this then remote and sparsely settled country that John B. Allen came in 1870 "to seek fame and fortune." He was admirably fitted by nature, training and experience to play a conspicuous part in a new and progressive community such as Washington Territory then was. Born in the west, reared and educated in the west, he understood the ways of western life and of western men, sympathized with their trials and privations and shared their hopes and ambitions for the future commonwealth. To the young man of twenty-five, with lofty ideals and generous ambitions, the thought of taking part in laying the foundations and in rearing the superstructure of a new state appeals with irresistible power. To him it is a continual inspiration. And so it was to John B. Allen. But, practical man that he was, he did not neglect for these larger ambitions, for this more captivating prospect, the immediate and pressing duty of qualifying himself in his new home to take an honorable position in his chosen profession of the law. He opened a small, unpretentious law office in Olympia. For a beginner he had a fairly good law library; but in all other respects his office was furnished scantily enough. He was now ready and waiting for clients, and he was not obliged to wait long. Th

pioneers, taught in the best school in the world, the school of experience (and in their case a varied and trying experience), were nearly always good judges of human nature; and it did not take them long to make up their minds that young Allen was made of the right stuff and that there was in him the making of a good lawyer. And so clients soon began to call upon him. Having a natural aptitude for the law, he handled his cases in court from the very first with a judgment and self possession that usually comes to one only after long years of practice. The bar of the territory in those days was a strong one. Allen in the early years of his practice had to face able and brilliant men—men like Garfield, Judge Strong, Judge McFadden, Judge Wyche and others of equal reputation and standing; but it is quite within the record to say that almost from the first case he tried John B. Allen proved himself a match for the oldest and ablest lawyers amongst them. His legal education was thorough. While he was not a man of many books, the great ones, the masters in the law, he knew well. His Blackstone and his Kent, his Story and his Greenleaf, in those days were his familiar and constant companions. As a result his mind was richly stored with the great underlying principles and reasoning of the law. While his adversary was hunting up, and relying upon, cases bearing more or less upon the one at bar, he was ready with the principle that ruled the case and applied the principle with a reasoning so clear and so cogent that he seldom failed to carry court and jury with him.

Five years after his arrival in Olympia, that is, in 1875, we find him in the midst of a successful practice, with a steadily increasing reputation as a lawyer and in the enjoyment of the respect, confidence and esteem of the entire community. Therefore the people were not surprised when it was announced that President Grant had appointed John B. Allen United States District Attorney for the Territory of Washington. The appointment met with the immediate and warm approval of the bench, the bar and the people of the territory. This office, which was directly in the line of his profession, gave him under existing conditions in the territory an unequalled opportunity for professional advancement, which he was quick to perceive and prompt to improve. The field of his professional activity was at once greatly enlarged, his acquaintance more widely extended, and his general practice very much increased. The territory was then divided into three judicial districts, but the United States Courts exercising jurisdiction in all United States cases were held in all the principal towns from Olympia to Walla Walla and from Port Townsend to Colville. Whenever a case in which the United States was a party was before any of these courts, the district attorney was expected to be there to

attend to it. Hence it came to pass that John B. Allen was in attendance, from time to time, upon every court in the territory. He very soon made himself familiar with the business and duties of the office which he handled and dispatched with the ease and ability of a veteran lawyer. No district attorney in any part of the country ever brought to the discharge of the duties of that office a higher or more conscientious regard for the interests of the government or a more scrupulous respect for the rights of others. He made an ideal district attorney—a prosecutor whose ability, learning and skill left no loose hole for the escape of the guilty, while the really innocent, though apparent transgressor, had nothing to fear. He held the office of United States District Attorney for ten years, having been reappointed by President Hayes and again by President Arthur. The record of those ten years affords incontestible proof of his ability as a lawyer and of his high character as an official. Outside of his official duties by no means light, he found time to carry on a large miscellaneous law practice. Wherever he attended court he was sure to be retained on one side or the other of nearly every important case. The court practice in those days was very different from what it is now. The judges traveled the circuit as they did in the earlier days. In the middle west, the same judge holding court at many different places in his district. The session of court usually lasted from three or four days to three or four weeks. As a general thing, the issues were made up and the cases tried at the same term of court. When the court convened the docket usually showed a number of motions and demurrers pending against complaints or answers. These were first taken up and disposed of, and amended complaints or answers had to be drawn over night by the lawyer with pen in hand, for there were no stenographers or typewriters in those days. The cases were then immediately brought on for trial and the lawyers had to be ready. There was no time for deliberate consideration. There were but few books to consult and but little time to consult them. And yet there was, in some respects, an admirable training school for the young lawyer. For, if it did not tend to make a deep lawyer, it certainly was calculated to make a ready one. It taught the young lawyer as an ordinary school or law practice could do the importance of being thoroughly grounded in the fundamental principles and learning of the profession, so that whatever unexpected turn in the law his case might take he would be prepared with some ruling principle to meet it. Helpless indeed was the lawyer who in those days was hurried into the trial of his case without adequate time for preparation, and who had not in his earlier years laid up a good store of legal learning to draw from in such an emergency. Few men were ever better fitted

by temperament, education and training for such a field than John B. Allen, and never did a man's early and diligent study of the law stand him in greater stead than Allen's under these new conditions. He had the requisite learning, the necessary industry, and natural abilities of a high order, and all at instant command. His readiness and versatility in the court room were the admiration and despair of his brethren at the bar. I have known him, at a single session of court lasting not more than a week or ten days, to be called in, without any previous preparation, to the trial of a criminal case, a civil case before a jury, an equity case and an admiralty case. And he handled each case as if he had always made a specialty of that department of the law, discussing the questions of law and practice as they arose in the course of the trial with a familiar knowledge of the law applicable to the case, a wealth of illustration and a persuasive force of reasoning that captivated court and jury alike. We have had, no doubt, at the Washington bar more eloquent and more widely read lawyers than John B. Allen, but in the art of persuading juries and convincing courts I have never known his superior in the territory or state. He belonged to the class of lawyers of which Jeremiah Mason was the supreme type. In his arguments to juries he never, or very rarely, sought to win them by appealing to their emotions. His manner, generally, was more correctly described by the invitation, "Come, let us reason together." And then his reasoning was so clear and so plain, so full of sound common sense, and enforced now and then with such apt illustrations from the daily experience of men, that every jurymen could see and feel the justice and the reasonableness of the lawyer's cause. His choicest intellectual gift was wisdom, which he possessed to an unusual degree. A man may have knowledge and learning, he may be gifted and brilliant, and yet he may not have wisdom, without which he is like a mariner at sea without a compass. Allen possessed this crowning quality in generous measure, and it largely led people in every walk of life who knew him to turn to him in times of doubt and difficulty for advice and counsel, and he never failed them.

Mr. Allen was an ardent republican in politics; and, while never unmindful of the fact that the law is a jealous mistress, he always found time to answer a call for help from his party, and there was not a political campaign in the territory or state during his lifetime in which he was not found earnestly and ably contending for the success of the republican party. For more than twenty years prior to 1884 the territory, with out a single exception, had gone republican; but in the latter year the democratic party, led by a brilliant and eloquent young lawyer, Hon. Charles S. Voorhees, swept the territory, electing Mr. Voorhees delegate in congress. This democratic victory was re-

peated in 1886. By this time the republicans of the territory had awakened to the fact that, if they were to regain their lost ground, the party must turn for leadership to its ablest man. As the time for holding the territorial convention of 1888 approached, the people plainly indicated their opinion as to the one who should lead the party in the coming contest. That man was John B. Allen. Accordingly, in obedience to the strong demand of the republicans throughout the territory, he was nominated for congress by the republican convention which was held in the autumn of that year. The campaign which he made in the fall of 1888 was a brilliant and decisive one, resulting in the triumph of the republicans and his own election by a large majority. But he never took his seat in the house of representatives, for, before the assembling of the congress to which he was elected, the Territory of Washington became a state. His position, however, as the successful representative of his party in the congressional election made him a logical candidate of the republicans for one of the senatorships from the new state. And his party being again successful in the election held under the new state constitution, he was, with but little opposition, elected the first senator from the State of Washington. His term was for four years, a period not long enough, no matter what a man's talents may be, to impress himself strongly upon the country. Yet in his case it was long enough to enable his fellow senators to take an approximate measure of the mental and moral stature of the man. It was soon perceived that his certificate of election was not the only evidence which he possessed of his qualifications for the high office of senator. He had been a successful lawyer under conditions that were well calculated to test the strength and quality of the mental and moral fiber of the man, and he had proved himself equal to every ordeal. To the instruction of the schools he had added a rich and varied experience of life in a new community whose national feeling had been quickened and intensified by its narrow escape from being transferred to a foreign flag. His habits of reading, study and reflection had well fitted him to take a helpful and prominent part in the consideration and discussion of questions of national importance.

A single occasion in the senate while he was a member will serve to illustrate his readiness in debate, his ability when suddenly called upon to present in a convincing manner the side of any question which was espoused, and the influence which he had already acquired in that body with men of both parties. The committee on naval appropriations had inserted a provision for \$25,000 in the naval appropriation bill for the purchase of a site for a dry dock at Port Orchard. The measure was

due course reported to the senate, and one day, while Mr. Allen was at luncheon, it was called up for consideration. As he returned to the senate chamber, the bill was being read and considered item by item. When the item for the appropriation for a dry dock at Port Orchard was reached, Mr. Allen was greatly astonished to find that the provision agreed upon by the committee had been changed so as to appropriate \$25,000 for a dry dock on the Pacific Coast at some point to be selected by the secretary of the navy. Now it should be borne in mind that the selection of the site had already been made by two commissions appointed by the president under congressional authority. One of these commissions was composed of three naval officers of distinction; the other of two eminent civilians, a skilled and experienced army engineer and two distinguished officers of the navy. Both commissions, after a careful and thorough examination of the waters of Oregon and Washington, had pronounced unqualifiedly in favor of Port Orchard as incomparably the best site for a dry dock and navy yard to be found on the Pacific Coast. Here was an attempt to undo all that had already been done by those two commissions. Allen arose and moved an amendment fixing the site of the dry dock at Port Orchard. This precipitated a debate that lasted for two days. The Oregon senators, Mitchell and Dolph, able and experienced men with the advantage of long service in the senate, were against it and so were the two senators from California. Many eastern senators having at that time no appreciation of the importance of Puget Sound, and being desirous of keeping all such appropriations for yards in their own states, united with the Oregon and California senators in opposing the appropriation for Port Orchard. Allen's amendment was fought with great ability by these senators, every resource at their command being brought to bear to compass its defeat. But in that distinguished body, as elsewhere, Allen proved equal to the occasion. He knew his subject thoroughly. He was ready with a conclusive answer to every objection raised to his amendment and in an argument remarkable for its thorough grasp of every detail of the subject, its clear and accurate information and sound reasoning, he carried a majority of the senate, though not of his party, with him and the amendment prevailed. It was a notable victory to be won by a new man in the senate over veteran leaders of that body, and it was a service of incalculable value that he rendered that day to his state and to the country, for now everyone can see that the Puget Sound Navy Yard located at Port Orchard is destined in the near future to become one of the most important navy yards of the United States and one of the greatest in the world. It is not, therefore, to be wondered at that in the short space of four

years' service in the senate of the United States, this new man from the northwest had won the respect, esteem and confidence of the leading men of that distinguished body.

In the fall elections of 1892 the republicans in the State of Washington were again successful. Out of a legislature composed of one hundred and twelve members they elected seventy-five. Senator Allen's term as senator would expire on March 3, 1893. He was a candidate for re-election. His popularity throughout the state was as great as ever. By his service in the senate he had not only maintained but had greatly increased his reputation with men of all parties. That was the choice of an overwhelming majority of the voters of his own party for senator was never denied by anyone. Of the republican members of the legislature of 1893 fifty-three were for him from first to last. If a republican caucus had been held, his nomination was certain. But the minority refused to go into caucus and none was held. The struggle for the election of a senator continued throughout the session, but there was no election. At one time Senator Allen had fifty-four republican votes, within three votes of the number required for an election. When it became apparent to him that he could not be elected, he went to his supporters and, after thanking them for their loyal support, pointed out to them that the interests of the people of the state and of the country were concerned in the election of a senator; that the public interest in this case, as in all others, was to be put before that of any individual citizen, and he therefore asked them to find some other fit republican that they could all unite upon and elect him senator. This was perfectly characteristic of John B. Allen. It was what those who knew him best would expect of him. With his interests of his party, the interests of the public, were always first—his own, second. His followers, believing that it would be better to fail in the election of a senator than to abandon the acknowledged choice of a majority of the republican members of the legislature and of the voters of the republican party throughout the state, refused to turn from him to anyone else and, as I have said, there was no election. Thus it came to pass that this public servant of unquestioned fitness for this post, of acknowledged ability, of stainless public record and of blameless life and character, the clear choice of a majority of the people of the state, was defeated, the will of the people ignored and overthrown, and the state itself deprived for two years of its rightful representation in the senate of the United States.

Mr. Allen was by birth and by inheritance an American with the true American's love of law and order. By precept and by example he inculcated the lesson that there is no true liberty in the world but

that which is regulated by law. Unless men in their collective capacity have sufficient self control in moments of passion and excitement to resist the savage impulse to take the law into their own hands, there can be no such thing as free government. Respect, reverence for the law in this free country was with him not merely a principle—it was an instinct, a passion. He was fond of quoting Lord Chatham's famous declaration, "Where law ends, tyranny begins." He had a clearer vision than most men of the dangerous consequences to our national character of the present alarming tendency (now becoming almost chronic in some parts of the country) to resort to mob law under the sense of indignation and outrage produced by the commission of some shocking crime. Members of our profession especially owe it as a great duty to the state to exert all their influence, in season and out of season, against this greatest peril to our institutions—the tyranny of the mob. In a letter to Voltaire, Frederick the Great once wrote: "Every man has in him a ferocious beast; few know how to chain him; the majority let him loose, when fear of the law does not restrain them." There never yet was a mob in any age or in any country that did not furnish an absolute demonstration of the truth of these words. In a free country where the people make their own laws, where they can amend them or repeal them, where as jurors they sit to enforce them, where directly through their votes, and indirectly through their representatives, they select the judges who expound and administer these laws, there are, there can be, no circumstances that can justify a resort to mob law. Whenever a community in the United States surrenders to the spirit of mob law and suffers the mob in its mad and bloody passion to trample the laws of the state or the nation under foot, that community thereby confesses its incapacity for self government. It stands condemned before the world as a community unworthy of citizenship in a free republic. It stands convicted of having violated what the ancients called "the conscience of the human race." Mob law and free government are incompatible. And there is no higher or more important duty laid upon American lawyers today than to impress this truth upon the people.

In order to attain distinction in life two things must conspire. First, there must be the opportunity, and next, there must be the ability to perceive and improve it. A man, for example, might have unsurpassed talent for the law, and yet if he dwelt in a country like that ruled by Peter the Great, where the only law was the ruler's will, his talent would perish with him unknown. A man might have a genius for war equal to that of Caesar or Napoleon, yet if his lot were cast in a peaceful age and in a small, unwarlike country, he might never be heard of as a warrior. If the great war of the rebellion had

been delayed twenty-five years, Grant or Sherman or Sheridan might never have been known as soldiers outside of the army register. And I am of the opinion that if it had been Allen's fortune to have lived his professional life in New York City rather than in Olympia, Walla Walla or Seattle, he would have risen to a place in the front rank of the ablest lawyers in the country. He had the ability, and only wanted the opportunity which the larger field in the east would have afforded him.

Mr. Allen had a kind and sympathetic nature. He had both wit and humor, which he used with telling effect at the bar and in his political contests. But he never used either to inflict a wound even on his bitterest adversary. He was indeed one

"Whose wit in the combat, as gentle as bright,
Ne'er carried a heart-stain away on its blade."

He was especially kind and considerate to young men, as scores throughout the state today will testify.

His private life was a worthy background to his professional and public career. I knew him intimately for more than a quarter of a century, and my acquaintance with him is one of the purest and most elevating treasures in my memory of the past. A more wholesome moral nature I never knew. His mind had the purity of that of a good woman. Yet he was no weakling. He did not belong to the insipidly moral class. He was in every sense a manly man. It is one of the misfortunes of humankind that we never value such men at their true worth until we have lost them forever.

"For it so falls out
That what we have we prize not to the worth
Whiles we enjoy it, but being lack'd and lost,
Why, then we rack the value; then we find
The virtue that possession would not show us
Whiles it was ours."

Now that he is gone, we begin to realize our loss; and to the state he served so well by precept, by patriotic work and by example, to the bar of the state whose history he has enriched by a professional career so full of honor and distinction, to his family to whom he has left the most precious of all inheritances, the memory of a good man's life—his loss is indeed irreparable.

TAXATION OF FRANCHISES.

By J. B. Reavis, Tacoma,

The practical economic problem of revenue for public expenditures is always with us. This ever recurring and certain liability can only be met by taxation in some form. The right of taxation is an incident of sovereignty and co-extensive with sovereignty. All subjects over which the sovereign power of the state extends are objects of taxation.

McCulloch vs. Maryland, 4 Wheaton, 316.

The power of the state unless constitutionally restricted, as to the mode, form and extent of taxation, is without limitation where the subject to which it applies is within her jurisdiction.

State taxes on foreign-held bonds, 15 Wallace, 300.

When justice requires the exercise of the unlimited (except by the constitution) power of the legislature to levy taxes neither the statutes of limitation nor laches will bar its exercise.

State vs. Kings County, 125 N. Y., 312.

As observed by an eminent jurist: "The power to tax is correlative with the power to confiscate." Any plan of levying taxes which fails to require each tax payer to pay his equal share proportionately in value with each and all others is unjust, and wrongs those who do pay the taxes. The imposition of the burden of taxation unequally, requiring certain classes of property and persons to bear an unjust share thereof, and through grace or privilege relieving others of these public burdens has always been a fruitful source of social and civic disturbances, and frequently culminated in political revolutions. Thus it may without controversy be assumed that the laying of taxes is of supreme importance in the administration of the state. In many of the sister states fundamental provisions declare that taxation must be equal and that all property must bear its just proportion of the burdens of government. The Constitution of Washington, (Article 7, Section 1,) declares: "That all property not exempt under the constitution shall be taxed in proportion to its value to be ascertained by law." And section 2, of the same article, declares in mandatory language: "The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state according to its value in money, and shall prescribe such regulations by law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of

his, her, or its property." So this wholesome rule of exact justice deduced from the wisdom of experience is crystallized in our organic law. But the legislature has not prescribed such general laws as to secure a just valuation for taxation of all property so that every person and corporation pays his or its tax. Tangible property is taxed; the farmer on his farm; the merchant on his goods; the factory on its plant; many professions, trades, occupations and callings pay a license for revenue, but the great mass of the intangible property of the state of large productive value contributes nothing, or merely a pittance to public revenue. No law has been made by the legislature to secure an assessment and valuation of franchises in this state. It has been judicially determined that franchises are property subject to taxation within the terms "all property not exempt" of our constitution.

Commercial Electric L. & P. Co. vs. Judson, 21 Wash., 168.
Edison Electric, etc., Co. vs. Spokane Co., 22 Wash., 168.

And in California a similar construction is made upon the same constitutional provision.

Spring Valley Water Works vs. Schottler, 62 Cal., 69.

Also in Wisconsin upon a statute of similar import:

Fond Du Lac Water Co. vs. Fond Du Lac, 82 Wis., 322.

What are franchises? A franchise may be generally defined as a right or privilege exercised under authority derived from the state. Blackstone, 4th Com., 159.

Atlantic and G. R. Co. vs. Ga., 98 U. S., 359.

Also a franchise may be described as any privilege granted by the public, either to an individual or a corporation. Thus the privilege of running a railroad is a franchise. The right of a foreign corporation to do business in the state is a franchise.

"An excise tax upon the franchise to be is entirely distinct from a tax not in lieu of a tax upon the franchise to do."

Chehalis Boom Co. vs. Chehalis County, 24 Wash., 135.

As an illustration of taxable franchises, may be mentioned the privilege of running a railroad and taking freight and fares; the consent of the public to a gas company laying its mains, to supply the public with gas; all privileges to use or cross public highways, express carriers, sleeping car business, etc. There can be only a general definition of franchises given, as the process to determine what such privileges is one of inclusion and exclusion, according to the nature of the privilege bestowed. While a franchise is property, it is of a class usually called intangible. The procedure for valuing and taxing franchises varies in a large number of the states according to the discretion of the legislature. There seems to be a consensus of judicial authority, that the power of the state is unlimited in its procedure

valuing and levying taxes on corporate franchises. The state may tax the right to be a domestic corporation in its discretion; it may tax a foreign corporation on the right to do business in the state, with the limitation that the valuation of the property of a foreign corporation carrying on interstate business must be confined to the tangible property of the corporation situated in the state, and as enhanced by its use and connection with the whole property of such corporation wherever situated, and the valuation of all its franchises connected with its property.

Current history shows these franchises or privileges granted by the public have been of great value to the beneficiaries. They have been generally the source of much of the rapid accumulation of great wealth in the country in the last few decades. This change of form in property has been very noted in recent years. The intangible property now constitutes a large proportion of the wealth of the country. Thus these changes in forms of property have, in the class described as intangible, withdrawn from taxation a large proportion of the active, productive income-earning property of the state, leaving the tangible property alone to bear the ever-increasing burdens of taxation. It may be safely assumed, that if the intangible property of the state was fairly assessed and paid taxes on its value the rate of taxation imposed on the present owners of tangible property could be reduced from fifty to seventy-five per cent. For the general prosperity and good of the whole people, and in behalf of equal enjoyment of the rights to property of all classes this is a consummation devoutly to be wished.

This may be accomplished by a fair taxation of franchises, including intangible property of the state. It rests with the legislature to provide by appropriate methods and procedure for the assessment and levy of taxes on intangible property. Such assessment and valuation is made in many of the older and wealthier states. The procedure for taxation of intangible property, including franchises in the states of Indiana, Illinois, Kentucky and Ohio has all been examined, tested and approved by the highest courts of those states and by the supreme court of the United States.

Sanford vs. Poe, 165 U. S., 194.

Railroad tax cases, 92 U. S., 575.

Adams Express Co. vs. Ky., 166 U. S., 171; 166 U. S., 185.

The methods of taxation of intangible property were all reviewed and approved. In the latter case the contention was that only the tangible property of the corporations doing interstate business in the state was the subject of taxation. The supreme court of the United States said: "But this contention practically ignores the existence of intangible

property, or at least denies its liability to taxation. * * * In a complex civilization of today a large proportion of the wealth of a community consists in intangible property and there is nothing in the nature of things or in the limitations of the federal constitution which restrains a state from taxing at its real value such intangible property. * * * To ignore this intangible property or to hold that it is not subject to taxation is to eliminate from the reach of the taxing power a large proportion of the wealth of the country. The first question to be considered, therefore, is whether there is belonging to these express companies intangible property, property differing from tangible property; a property created by either combined use, or the manner of use, of the separate articles of tangible property; or the grant or acquisition of franchises or privileges, or all together. To say that there can be no such intangible property; that it is something of no value, is to insult the common intelligence of every man."

As an illustration is also given, the valuation of the corporate property of a bridge and railroad company which was before the court in contesting a tax. The court said: "As merely bridge and tracks the value was \$1,227,694.54, such, therefore, being the adjudged value of the tangible property, as merely bridge and tracks that was its value. If the state's power of taxation is limited to the tangible property the company should only be taxed in the two states for that sum; but it also appears that it as a corporation had issued bonds to the amount of \$2,000,000.00 upon which it was paying interest; that it had a capital stock of one million dollars; and that the shares of the stock were worth not less than ninety dollars per share. The owner, therefore, of that stock had property which for the purposes of income and for the purposes of sale were worth \$2,900,000.00. What gives the excess of value; obviously the franchises, the privileges the company possesses in its intangible property. Now it is a cardinal rule which should never be forgotten, that whatever property is worth for purposes of income and sale, it is also worth for purposes of taxation."

An important distinction between the purely franchise or excise tax and that on tangible property is, that in the laying of excise taxes on franchises as such, the rule of uniformity required in article 7 of the state constitution is not applicable. The uniform judicial expression is that these privileges subsisting by public authority are subject to such restrictions and to such burdens as the policy of the state may require.

State vs. Clark, 71 Pac., 20; 30 Wash., 439.

Fleetwood vs. Read, 21 Wash., 547.

Magoun vs. Bank, 170 U. S., 283.

The supreme court of the United States said in Delaware Railroad

Tax case, 18 Wallace, 206: "The state may impose taxes upon the corporation as an existing entity under its laws as well as upon the capital stock of the corporation or its separate corporate property and the manner in which its value may be assessed are mere matters of legislative discretion."

In this state, at the present time, franchises are not valued separately but are taxed as associated with other property which may be enhanced in value by such association. It is apparent from a full consideration of the subject, that an intelligent and plain procedure for the taxation of intangible property can be enacted by the legislature; and in view of the ample experience from the sister states and in accordance with recognized legal principles, so as to lay just taxes upon the great wealth in the form of intangible property which now contributes only a pittance to public expenditure. It may be assumed without further discussion that any system for the intelligent assessment and valuation of intangible property requires the selection of an intelligent state assessment board or commission which shall be authorized to assess and be given the power and facilities to make the necessary examination of the values and to list and appraise the value of such property.

PAPERS READ.

Year.	Writer,	Subject.
1894.....	John Arthur.....	President's Address—"Lawyers in Their Relations With the State."
"	R. A. Ballinger.....	"Our Community Property Laws."
"	Frank H. Graves.....	"Non-Partisan Selection of the Judiciary."
"	Thomas Carroll	"Policy of Redemption Laws."
"	John W. Pratt.....	"Government of Cities."
"	Charles S. Fogg	"Evils of the Promiscuous Appointment of Receivers."
"	James B. Reavis.....	"Our Exemption Laws."
"	Frank T. Post.....	"The Material Man's Lien."
"	Orange Jacobs	"Reminiscences of the Bench and Bar of Washington."
1895.....	George M. Forster.....	President's Address.
"	George Turner	"Practice and Procedure in the State of Washington."
"	Charles O. Bates.....	"Juries and Jury Trials."
"	David E. Bailly.....	"Stare Decisis."
"	C. H. Hanford.....	"Jurisdiction of American Courts, State and Federal."
"	John J. McGilvra.....	"The Pioneer Judges and Lawyers of Washington."
1896.....	Charles S. Fogg	President's Address—"The Law and Lawyer in History."
"	T. N. Allen	"Judicial Legislation."
"	N. T. Caton	"Pioneer Judges and Lawyers."
"	Emmett N. Parker.....	"Probate Law and Practice in Washington."
"	George Donworth.....	"Corporations."
"	R. S. Holt.....	"Contributory Negligence."
"	James Z. Moore	"Landlord and Tenant."
"	Alfred Battle.....	"Record Notice and Curative Acts."
"	W. T. Dovell.....	"Bench and Bar."
1897.....	Harold Preston.....	President's Address.
"	E. B. Leaming.....	"Philosophy of the Law."
"	W. H. Pritchard.....	"The Policy and Practical Effect of Usury Laws."
"	Ben Sheeks	"Some Judicial Opinions—A Study."

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1897.....	Austin Mires.....	"Irrigation and Water Rights in the State of Washington."
"	John P. Hoyt.....	"Reminiscences of the Bench and Bar of Washington."
1898.....	George Turner.....	President's Address.
"	W. C. Sharpstein.....	"Annexation of Foreign Territory; Constitutionality and Expediency."
"	F. H. Brownell.....	"Mining Laws in Washington."
"	James Wickersham.....	"The Constitution of China—A Study in Primitive Law."
"	Henry M. Hoyt.....	"The Legal Effects of Mortgages and Pledges of Rents and Profits of Real Estate."
"	Frederick Bausman.....	"Public Policy as an Element of Judicial Construction."
1899.....	Theodore L. Stiles.....	President's Address — "Legislative Encroachments Upon Private Right."
"	James G. McClinton.....	"Reform in Criminal Procedure."
"	Byron Millett.....	"Fourteenth Amendment to the United States Constitution."
"	George H. Walker.....	"What Shall Be Done About the Trusts?"
"	E. F. Blaine.....	"Decennial of Our State Constitution."
"	Samuel R. Stern.....	"The Law and the Laborer."
1900.....	George Donworth.....	President's Address — "The Passing of Precedent."
"	Will H. Thompson.....	"The Status of Our Newly-Acquired Territory."
"	Herbert S. Griggs.....	"Admiralty Practice."
"	Charles E. Shepard.....	"Limitations on Municipal Indebtedness."
"	C. W. Hodgdon.....	"Government Ownership of Railroads."
"	J. B. Davidson.....	"Needed Reforms in the Laws of Marriage and Divorce."
"	Thomas B. Hardin.....	"How Should United States Senators Be Elected?"
1901.....	Samuel R. Stern.....	President's Address.
"	A. G. Kellam.....	"The Trust Fund Theory of Corporate Assets."
"	T. O. Abbott.....	"Advantages of the Torrens System of Conveyancing."
"	E. G. Kreider.....	"Law Reporting."
"	Joseph Shippen.....	"The Insular Questions and Their Solution by the Supreme Court of the United States."

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"	Edward Whitson	"The Course of Legislation in Wash- ington."
"	Will G. Graves.....	"Stability of Legal Principles—A Thing of the Past."
"	Arthur Remington.....	"Railway and Transportation Commis- sions."
"	C. H. Hanford.....	"Conflicting Decisions of Federal and State Courts."
"	Orange Jacobs ..	"Reminiscences of Bench and Bar."
"	Edward Pruyn	Poem—"A Day in Court."
1903.....	R. G. Hudson.....	President's Address—"Trusts."
"	F. D. Nash	"Street Assessments."
"	N. T. Caton.....	"Some Pioneer Judges and Lawyers I Have Known."
"	L. Frank Brown	"The Use and Abuse of the Labor Union."
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DISCARDED BY
NEW YORK COUNTY
LAWYERS' ASSOCIATION

PROCEEDINGS

OF THE

Washington State Bar Association



SIXTEENTH ANNUAL SESSION

Held at the City of Seattle, July 7th, 8th and 9th, 1904.

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**The Seventeenth Annual Session
of the
Washington State Bar Association
will be held in the
City of North Yakima
(Date not yet determined).**

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John B. Davidson,	.	.	.	Ellensburg
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OBITUARIES.

Wallace Mount,	Olympia
Thomas H. Brents,	Walla Walla
Arthur Remington,	Olympia
C. O. Bates,	Tacoma
John D. Atkinson,	Wenatchee

SPECIAL COMMITTEES.

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J. F. Douglas,	Seattle
Joseph Shippen,	Seattle
Austin E. Griffith,	Seattle
M. F. Gose,	Pomeroy
S. J. Chadwick,	Colfax

On Torens system of land transfers:

T. O. Abbott,	Seattle
Geo. E. Wright,	Seattle
James B. Howe,	Seattle

To urge the Legislature to provide for separate elections of judges:

E. C. Hughes,	Seattle
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John L. Sharpstein,	Walla Walla

To determine the sentiment of the bar on the proper division of the State into Federal Judicial Districts:

W. A. Peters,	Seattle
Edward Whitson,	North Yakima
R. G. Hudson,	Tacoma

Austin Mires,	.	.	.	.	Ellensburg
Samuel R. Stern,	.	.	.	.	Spokane

To secure the publication of Federal Court Rules:

Ira Bronson,	.	.	.	.	Seattle
Charles E. Shepherd,	.	.	.	.	Seattle
Harold Preston,	.	.	.	.	Seattle

ROLL OF MEMBERS.

Abbott, T. O.,	Seattle
Albertson, R. B.,	Seattle
Allen, W. L.,	Spokane
Anderson, A. A.,	Seattle
Atkinson, John D.,	Wenatchee
Arthur, John	Seattle
Ballinger, R. A.,	Seattle
Barnhart, Richard M.,	Spokane
Bates, Charles O.,	Tacoma
Battle, Alfred	Seattle
Bausman, Frederick,	Seattle
Baxter, Chauncey L.,	Seattle
Bedford, Charles,	Tacoma
Belt, George W.,	Spokane
Benson, E. D.,	Seattle
Blackburn, H. H.,	Puyallup
Blaine, E. F.,	Seattle
Bowman, A. C.,	Seattle
Brady, Edward,	Seattle
Brandt, Emil J.,	Seattle
Brents, Thomas H.,	Walla Walla
Bronson, Ira	Seattle
Brown, Edwin J.,	Seattle
Brown, Frank L.,	Seattle
Brown, O. P.	Bellingham
Brownell, F. H.,	Everett
Burke, Thomas,	Seattle
Campbell, F.,	Tacoma
Carroll, Thomas	Tacoma

Cass, J. P.,	Tacoma
Caton, Nathan T.,	Davenport
Chadwick, S. J.,	Colfax
Christian, Walter,	Tacoma
Claypool, C. E.,	Circle City, Alaska
Clementson, Geo., H.,	Port Angeles
Clifford, Miles,	Tacoma
Cole, Irving T.,	Seattle
Coleman, A. R.,	Port Townsend
Coleman, Wilbra,	Sedro Woolley
Condon, John T.,	Seattle
Corrigan, John L.,	La Conner
Corliss, C. W.,	Seattle
Cross, J. C.,	Aberdeen
Crow, Herman D.,	Spokane
Crowley, D. J.,	Tacoma
Davidson, John B.,	Ellensburg
Davis, Peter V.,	Seattle
Dawson, William Sherman,	Spokane
Deming, A. W.,	Summit
De Steiguer, George E.,	Seattle
Doherty, L. A.,	Wallace, Idaho
Donworth, George,	Seattle
Dornitzer, P. C.,	Seattle
Douglas, G. F.,	Seattle
Douglas, S.,	Colville
Doval, W. T.,	Seattle
Drain, James A.,	Olympia
Dudley, F. M.,	Spokane
Edsen, Eduard P.,	Seattle
Emmons, R. W.,	Seattle
Fogg, Charles S.,	Tacoma
Fogg, George W.,	Tacoma

Follmer, Elmer S.,	.	.	.	Seattle
Foster, Geo. M.,	.	.	.	Spokane
Frater, A. W.,	.	.	.	Seattle
Fullerton, Mark A.,	.	.	.	Colfax
Gay, Wilson R.,	.	.	.	Seattle
Gilbert, W. S.,	.	.	.	Spokane
Gilliam, Mitchell,	.	.	.	Seattle
Glass, Chester,	.	.	.	Spokane
Gleason, Chas. S.,	.	.	.	Seattle
Gordon, Meritt, J.,	.	.	.	Spokane
Gose, M. F.,	.	.	.	Pomeroy
Gowan, Richard,	.	.	.	Seattle
Graves, Carroll B.,	.	.	.	Ellensburg
Graves, W. G.,	.	.	.	Spokane
Greene, Roger S.,	.	.	.	Seattle
Griffin, C. E.,	.	.	.	Tacoma
Griffiths, Austin E.,	.	.	.	Seattle
Griggs, Herbert S.,	.	.	.	Tacoma
Grosscup, B. S.,	.	.	.	Tacoma
Guerin, Reynolds F.,	.	.	.	Seattle
Guie, E. H.,	.	.	.	Seattle
Hadley, Hiram E.,	.	.	.	Olympia
Hanford, C. H.,	.	.	.	Seattle
Happy, Cyrus,	.	.	.	Spokane
Hardin, Thomas B.,	.	.	.	Seattle
Harris, James, M.,	.	.	.	Tacoma
Harris, W. H.,	.	.	.	Tacoma
Hart, John B.,	.	.	.	Seattle
Hartman, John P., jr.,	.	.	.	Seattle
Hartson, Millard T.,	.	.	.	Spokane
Hastings, H. H. A.,	.	.	.	Seattle
Hess, John B.,	.	.	.	Spokane
Heuston, B. F.,	.	.	.	Tacoma

Heyburn, W. B.,	.	.	.	Wallace, Idaho
Heyburn, E. M.,	.	.	.	Spokane
Higgins, Thomas B.,	.	.	.	Spokane
Hindman, W. W.,	.	.	.	Spokane
Hinkle, J. D. ,	.	.	.	Spokane
Hodgdon, C. W.,	.	.	.	Hoquiam
Holland, George F.,	.	.	.	Spokane
Holloway, C. K.,	.	.	.	Spokane
Holt, R. S.,	.	.	.	Tacoma
Hovey, C. R.,	.	.	.	Ellensburg
Howe, James B.,	.	.	.	Seattle
Hoyt, John P.,	.	.	.	Seattle
Hoyt, Henry M.,	.	.	.	Spokane
Hoyt, Charles W.,	.	.	.	Spokane
Hubbard, H. Frank,	.	.	.	Coupeville
Hudson, R. G.,	.	.	.	Tacoma
Hughes, E. C.,	.	.	.	Seattle
Humphries, John E.,	.	.	.	Seattle
Huneke, William A.,	.	.	.	Spokane
Huntley, Herbert B.,	.	.	.	Seattle
Hurd, M. P.	.	.	.	Mt. Vernon
Jacobs, Orange,	.	.	.	Seattle
Jacobs, A. L.,	.	.	.	Seattle
Joiner, Geo. A.	.	.	.	Mt. Vernon
Jones, Richard S.,	.	.	.	Seattle
Kauffman, Ralph,	.	.	.	Ellensburg
Kellam, A. G.,	.	.	.	Spokane
Kennan, H. L.,	.	.	.	Spokane
Kershaw, T. R.,	.	.	.	Bellingham
Knapp, Lyman E.,	.	.	.	Seattle
Kreider, E. G.,	.	.	.	Mexico City, Mex.
Kuhn, Joseph,	.	.	.	Port Townsend
Langford, F. E.,	.	.	.	Spokane

Leehey, Maurice,	. . .	Seattle
Lehman, Robert B.,	. . .	Tacoma
Leo, John,	. . .	Tacoma
Levy, Aubrey,	. . .	Seattle
Loomis, Henry B.,	. . .	Seattle
Lueders, Henry W.,	. . .	Tacoma
Lewis, James Hamilton,	. . .	Chicago, Ill.
Linn, O. V.,	. . .	Olympia
Lindsley, J. B.,	. . .	Spokane
Lund, Charles P.,	. . .	Spokane
Lung, Henry W.,	. . .	Seattle
Mattison, Thomas,	. . .	Tacoma
McBride, John R.,	. . .	Spokane
McClain, Henry,	. . .	Mt. Vernon
McClinton, James G.,	. . .	Port Angeles
McCrosky, R. L.,	. . .	Colfax
Macdonald, Ernest C.,	. . .	Spokane
McGivra, O. C.,	. . .	Seattle
Mendenhall, Mark F.,	. . .	Spokane
Merritt, H. D.,	. . .	Spokane
Millett, Byron,	. . .	Olympia
Million, E. C.,	. . .	Mt. Vernon
Miller, Eugene,	. . .	Spokane
Miller, Fred	. . .	Spokane
Mires, Austin,	. . .	Ellensburg
Moore, James Z.,	. . .	Seattle
Moore, William H.,	. . .	Spokane
Mount, Wallace,	. . .	Olympia
Munday, Charles F.,	. . .	Seattle
Munn, Geo. Ladd,	. . .	Seattle
Munter, Adolph,	. . .	Spokane
Murray, Charles A.,	. . .	Spokane
Myers, H. A. P.,	. . .	Davenport

Nash, Frank D.,	.	.	.	Tacoma
Neagle, John L.,	.	.	.	Seattle
Neal, C. H.,	.	.	.	Davenport
Nichols, J. W. A.,	.	.	.	Tacoma
Onstine, Burton J.,	.	.	.	Spokane
Palmer, E. B.,	.	.	.	Seattle
Parker, Emmett N.	.	.	.	Tacoma
Parker, James H.,	.	.	.	Hoquiam
Parsons, Galusha,	.	.	.	Tacoma
Peacock, John A.,	.	.	.	Spokane
Peters, William A.,	.	.	.	Seattle
Pickrell, J. N.,	.	.	.	Colfax
Pierce, Frank,	.	.	.	Seattle
Piles, S. H.,	.	.	.	Seattle
Porter, Nathan S.,	.	.	.	Olympia
Post, Frank T.,	.	.	.	Spokane
Prather, L. H.,	.	.	.	Spokane
Preston, Harold,	.	.	.	Seattle
Price, J. G.,	.	.	.	Seattle
Pruyn, Edward,	.	.	.	Ellensburg
Quinn, Patrick F.,	.	.	.	Spokane
Ramey, H. J.,	.	.	.	Seattle
Reavis, James B.,	.	.	.	Seattle
Reid, George T.,	.	.	.	Tacoma
Reinhart, C. S.,	.	.	.	Olympia
Remington, Arthur,	.	.	.	Olympia
Richardson, William E.,	.	.	.	Spokane
Roberts, John W.,	.	.	.	Seattle
Robinson, J. W.,	.	.	.	Olympia
Rockwell, T. D.,	.	.	.	Spokane
Ronald, J. T.,	.	.	.	Seattle
Robb, Bamford H.,	.	.	.	Seattle
Root, Milo A.,	.	.	.	Seattle

Ross, E. W.,	.	.	.	Olympia
Rudkin, Frank H.,	.	.	.	North Yakima
Saunders, Wirt W.,	.	.	.	Spokane
Sauter, O. E.,	.	.	.	Seattle
Scott, W. D.,	.	.	.	Spokane
Shackleford, John A.,	.	.	.	Tacoma
Shaffer, C. Will,	.	.	.	Olympia
Shank, Corwin S.,	.	.	.	Seattle
Sharpstein, John L.,	.	.	.	Walla Walla
Sharpstein, W. C.,	.	.	.	San Francisco, Cal.
Sheeks, Ben,	.	.	.	Aberdeen
Shepard, Chas. E.,	.	.	.	Seattle
Shepard, Thomas R.,	.	.	.	Seattle
Shine, P. C.,	.	.	.	Spokane
Shippen, Joseph,	.	.	.	Seattle
Slauson, Howard B.,	.	.	.	Seattle
Slemmons, A. L.,	.	.	.	Ellensburg
Smith, Eben,	.	.	.	Seattle
Smith, Del Cary,	.	.	.	Spokane
Smith, Winfield R.,	.	.	.	Seattle
Smith, Sol,	.	.	.	South Bend
Snell, Bertha M.,	.	.	.	Tacoma
Snell, Marshall K.,	.	.	.	Tacoma
Snell, W. H.,	.	.	.	Tacoma
Southard, Frank S.,	.	.	.	Seattle
Squire, Watson C.,	.	.	.	Seattle
Stafford Marshall F.,	.	.	.	Bellingham
Staser, C.,	.	.	.	Ritzville
Stedman, Livingston B.,	.	.	.	Seattle
Steiner, G. E.,	.	.	.	Seattle
Stern, Samuel R.,	.	.	.	Spokane
Stewart, James,	.	.	.	Port Angeles
Stiles, T. L.,	.	.	.	Tacoma

Stoll, W. T.,	.	.	.	.	Spokane
Stratton, W. B.,	.	.	.	.	South Bend
Struve, Henry G.,	.	.	.	.	Seattle
Tallman, Boyd J.,	.	.	.	.	Seattle
Taylor E. Win.,	.	.	.	.	Spokane
Teats, Govnor,	.	.	.	.	Tacoma
Thayer, W. J.,	.	.	.	.	Spokane
Thompson, Will H.,	.	.	.	.	Seattle
Tolman, Warren W.,	.	.	.	.	Spokane
Town, Ira A.,	.	.	.	.	Tacoma
Townsend, W. F.,	.	.	.	.	Spokane
Trefethen, D. B.,	.	.	.	.	Seattle
Tucker, O. A.,	.	.	.	.	Seattle
Turner, L. T.,	.	.	.	.	Seattle
Turner, George,	.	.	.	.	Spokane
Vance, T. M.,	.	.	.	.	Olympia
Voorhees, C. S.,	.	.	.	.	Spokane
Voorhees, Reese H.,	.	.	.	.	Spokane
Wakefield, W. J. C.,	.	.	.	.	Spokane
Walker, George H.,	.	.	.	.	Seattle
Wall, J. P.,	.	.	.	.	Ballard
Warburton, S.,	.	.	.	.	Tacoma
Warren, W. T.,	.	.	.	.	Wilbur
Watrous, Martin,	.	.	.	.	Seattle
Waugb, J. C.,	.	.	.	.	Mt. Vernon
Weir, Allen,	.	.	.	.	Olympia
Wells, S. A.,	.	.	.	.	Spokane
Welsh, W. J.,	.	.	.	.	Roslyn
Wheeler, L. H.,	.	.	.	.	Seattle
Whited, Kirk,	.	.	.	.	Wenatchee
Whitson, Edward,	.	.	.	.	North Yakima
Wickersham, James,	.	.	.	.	Circle City, Alaska
Wiley, Charles L.,	.	.	.	.	Seattle

Wilhelm, Honor L.,	.	.	.	Seattle
Williams, James A.,	.	.	.	Spokane
Williams, Louis,	.	.	.	Seattle
Wilshire, W. W.,	.	.	.	Seattle
Winfree, W. H.,	.	.	.	Spokane
Winders, C. H.,	.	.	.	Seattle
Wooten, Dudley G.,	.	.	.	Seattle
Wright, Geo. E.,	.	.	.	Seattle
Zent, W. W.,	.	.	.	Ritzville

MEMBERS ELECTED 1904.

Anderson, A. A.,	.	.	.	Seattle
Atkinson, John D.,	.	.	.	Wenatchee.
Baxter, Chauncy L.,	.	.	.	Seattle
Benson, E. D.,	.	.	.	Seattle
Black, A. L.,	.	.	.	Bellingham
Brown, Edwin J.,	.	.	.	Seattle
Coleman, A. R.,	.	.	.	Port Townsend
Coleman, Wilbre,	.	.	.	Sedro Woolley
Corliss, C. W.,	.	.	.	Seattle
Corrigan, J. L.,	.	.	.	La Conner
Dormitzer, P. C.,	.	.	.	Seattle
Douglas, G. F.,	.	.	.	Seattle
Drain, James A.,	.	.	.	Olympia
Frater, A. W.,	.	.	.	Seattle
Folhmer, E. G.,	.	.	.	Seattle
Gleason, Chas. S.,	.	.	.	Seattle
Griffin, C. E.,	.	.	.	Tacoma
Guie, E. H.,	.	.	.	Seattle
Hart, John B.,	.	.	.	Seattle
Hubbard, H. Frank,	.	.	.	Coupeville

Hurd, M. P.,	.	.	.	.	Mt. Vernon
Joiner, Geo. A.,	.	.	.	.	Mt. Vernon
Kuhn, Joseph,	.	.	.	.	Port Townsend
Loomis, Henry B.,	.	.	.	.	Seattle
Munn, Geo. Ladd,	.	.	.	.	Seattle
McLan, Henry L.,	.	.	.	.	Mt. Vernon
Pierce, Frank,	.	.	.	.	Seattle
Price, J. G.,	.	.	.	.	Seattle
Ramsey, H. J.,	.	.	.	.	Seattle
Robb, Banford A.,	.	.	.	.	Seattle
Sauter, O. A.,	.	.	.	.	Seattle
Sharpstein, John L.,	.	.	.	.	Walla Walla
Stafford, Marshall F.,	.	.	.	.	Bellingham
Steiner, G. E.	.	.	.	.	Seattle
Stedman, L. B.,	.	.	.	.	Seattle
Stratton, W. B.,	.	.	.	.	South Bend
Trefethen, D. B.,	.	.	.	.	Seattle
Tucker, O. A.,	.	.	.	.	Seattle
Turner, L. T.,	.	.	.	.	Seattle
Vance, T. M.	.	.	.	.	Olympia
Watrous, Martin,	.	.	.	.	Seattle
Wilshire, W. W.	.	.	.	.	Seattle
Winders, C. H.,	.	.	.	.	Seattle
Wooten, Dudley G.,	.	.	.	.	Seattle
Wright, Geo. E.,	.	.	.	.	Seattle

MEMBERS IN ATTENDANCE.

(The roll call was dispensed with but a book was provided and all members in attendance asked to record their presence by registering. Only about seventy-five did so, and as there were many more than that number present the list is omitted.)

PROCEEDINGS.

Seattle, Washington, 10. A. M., July 7, 1904.

The Washington State Bar Association met in annual session in the city of Seattle, in the United States Court room, and was called to order by the President at 10 o'clock A. M.

There were present the President, Mr. William A. Peters, of Seattle, the First Vice-President, Mr. Edward Whitson, of Yakima, the Secretary; Mr. C. Will Shaffer, of Olympia, and quorum of members.

The President—Gentlemen: We have with us the President of the King County Bar Association, who will express to you a few words of welcome. I need not do further than suggest the name of that Nestor of the bar, Judge Jacobs; his appearance is his own introduction.

Mr. Orange Jacobs—Mr. President and Gentlemen: It has fallen to my happy lot, as President of the local bar association, to bid the visiting brothers a hearty and whole soul welcome to this, our association. Now we are always glad to see our friends from the great Inland Empire, where their fields are green, and where they have lucious melons and peaches and fruits of all kinds. It is said that the ladies, and I am prepared to vouch for it, in that section of the country are beautiful; I am told that the men of that section of the country all irrigate. It is a country that Lincoln once described "where they stack all the grain and hay that they can out of doors, and put the rest in their barns."

We are glad to welcome our friends from the north, who

dwell along the shores of that spacious bay called Bellingham and who have lately illustrated one of the great principles of our government—E. Pluribus Unum—and have made out of the many towns on that bay one city, full of hope and promise. We always are glad to see our friends of the City of Smelter stacks, and from the Custom House City and from the “City of Destiny,” which is said to be located near the base of the beautiful, snow-capped mountain whose name escapes my memory. We are always happy to welcome our friends from Capitol City; they always bring a sort of an official air along with them, that does us good. We also welcome our friends from the great Oregon Valley where rolls the Columbia, and hears other sounds now save its own dashings.

But, my friends, let me say, while this is in no sense the term an open city, yet we have dwelt here for a time sufficient to have applied to us that legal maxim, “The maxim of man runneth not to the contrary.” You will find this sufficiently open here, and opportunities sufficiently great for the gratification of all rational desires. However, if any of you should feel cramped in your liberties I wish to inform you that the Mayor of this city is an honored and distinguished member of this association, and he has been distinguished by his general public spiritedness in the granting of personal privileges. One word of warning: It is said that there is in this city somewhere located, none of the members of the local bar know exactly its latitude or longitude, a dead line; its path is said to be strewn with quicksand and pitfalls; beware, gentlemen, of the dead line.

Now he have prepared here, according to the Seattle spirit, something for your entertainment while you are here. We have made preparations to furnish you music so that you may cultivate your taste in that direction; we have prepared something for the inner man, and we have also prepared something

by which you might release your pockets, if you found a disposition to spend a little money on chance. We have imported some four or five very fast horses, and there will be some distinctive races run at The Meadows on Saturday, which you are cordially invited to attend. I hope you will have a good time—that is my request.

The President: It was proposed that Mr. Brownell should respond to this address, but we have just had telegraphic word that he is in the East. On the spur of the moment, we have asked Mr. Whitson to take his place, and he has kindly consented to do so, notwithstanding this sudden call upon him.

Mr. Whitson—Mr. President and Gentlemen: I feel somewhat like the sailor who came into church and was standing back at the end of the church, and the minister had just arrived at that point in his sermon where he had the goats and sheep separated, and he was just asking, "Now, my brothers, who will be the goats on that day?" He didn't hear anybody say anything, and he repeated the remark a time or two; finally the sailor said, "Rather than have the show stop I will be the goat."

Now, before I came over here I want to confess that I thought of the possibility of somebody calling upon me to make some remarks when I was not prepared, and I went over the whole program and I could not think of anything that I could prepare that would work in. If I had known that this was to be my address I certainly would have responded to the eloquent remarks that have been made by the gentleman who has addressed you, in more fitting style. Speaking of the Inland Empire, and of the suggestions that were made by your speaker in relation to the ladies—their being beautiful—I suppose I am not authorized to speak for them, but I have been reminded of a little remark that Fred Wright, who is a new-comer in our country, made to a gentleman he was

trying to sell some land to; he says, "You raise watermelons in this country?" He says, "Yes, we raise watermelons, one of the great objections is that the vines grow so fast they dig the watermelons all over the ground and wear them out."

It goes without saying that the Bar Association of this county has demonstrated time and again its ability to enter the members of the bar from other parts of the State, I know that there is a great treat in store for us, and on behalf of those who are visiting here with the bar I wish to say that we greatly appreciate the hospitality that is in store for us.

The President then read his address to the Association.

(See appendix.)

The President: The next in order is the reading of the minutes of the last meeting.

Mr. Richard Saxe Jones moved that the reading of the minutes be dispensed with. Carried.

The President: The report of the Executive Committee.

Report of the Executive Committee read by the Secretary follows:

REPORT OF EXECUTIVE COMMITTEE.

By call of President W. A. Peters, the Executive Committee met in the office of the President, in the city of Seattle, February 6, 1904, at 4 o'clock P. M. There were present, President W. A. Peters, Vice-President Ed. Whitson, Second Vice-President Frank H. Bronnell, and Acting Secretary C. Will Shaffer.

Committee was called to order by the President.

Resignation of E. G. Kreider as Secretary, to take effect January 1, 1904, read, and, on motion of Mr. Whitson, same was accepted, and Will Shaffer was elected to fill the vacancy.

On motion of Mr. Brownell, the date of the next annual meeting made July 7, 8 and 9, 1904.

In pursuance to the instruction of the association at its last meeting the following resolution was unanimously adopted:

Resolved, That committee reports shall be filed at least 30 days before

the annual meeting and the Secretary shall digest the same and send synopses to the members at the time of sending out programs.

The following persons were selected to address the annual gathering on the respective subjects set opposite their names:

President's Address, W. A. Peters, Seattle.

"Legal Ethics," Hon. Will H. Thompson, Seattle.

"Eminent Domain," Judge H. S. Elliott, Chehalis.

"State and Federal Courts," E. C. Macdonald, Spokane.

"The Desirability of Harmonizing State and Federal Irrigation Laws," Judge Carroll B. Graves, Ellensburg.

"Legal Aspects of the Panama Affair," Judge Franklin Rudkin, North Yakima.

"Should This State Permit Corporations to Own and Vote Stock in Other Corporations."—A discussion:

Affirmative, Hon. Alfred Battle, Seattle.

Negative, Hon. T. L. Stiles, Tacoma.

Special committee report on Torrens system.

C. WILL SHAFFER, Secretary.

The President: Gentlemen, what is your pleasure with respect to the course taken by the committee? If there is nothing else suggested, it will be placed on file. Report of the Secretary.

The Secretary reads the report as follows:

REPORT OF SECRETARY.

To the President and Members of the Washington State Bar Association:

Gentlemen: I have the honor of submitting my annual report as Secretary for the year ending June 30, 1904, as follows:

Number of members as per last report.....	212	
Number joined since.....	21	
		233
Number dropped for non-payment of dues.....	3	
Number died.....	3	
Number removed from State.....	1	7
Total membership.....		226

Cash received from admission fees.....	\$85.00
Cash received from dues.....	96.00

Cash paid to Treasurer.....	\$181.00
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C. WILL SHAFFER, Secretary.

The President: If there is no objection, the report will be placed on file. Report of the Treasurer.

Report of the Treasurer read as follows:

TREASURER'S REPORT.

Olympia, Washington, July 5, 1904.

To the Washington State Bar Association:

Gentlemen: I have the honor to present for your consideration, this, my annual report, as follows:

RECEIPTS.

1903

Aug. 28, To balance as per last report.....	\$242.64
Aug. 29, To received from the Secretary.....	166.00
Sept. 4, To received from the Secretary.....	5.00
Dec. 30, To received from the Secretary.....	10.00
	<hr/>
	\$423.64

DISBURSEMENTS.

1903.

Aug. 29, By paid warrant No. 28.....	\$ 79.75
Oct. 24, By paid warrant No. 29.....	167.34
Dec. 30, By paid warrant No. 30.....	27.50
	<hr/>
	\$274.59
To balance cash on hand July 5, 1904.....	\$149.05
	<hr/>
	\$423.64

Very respectfully submitted,

N. S. PORTER, Treasurer.

The President: Gentlemen, what shall be done with this report? If there is no objection, it will be referred to the Executive Committee.

The President: I think probably we might as well adjourn

now until the afternoon session at 2 o'clock and let the Secretary take charge of applications for membership.

Mr. Shank: Mr. President, I would like to make a motion before we adjourn. It has been suggested to me that perhaps the time of holding our annual meeting should be changed, and that a committee be appointed by the Chair who shall report at some subsequent session of this association and make recommendations along that line; and to that end I move you that the President appoint a committee of three, which committee shall consider that matter and report at some subsequent session of the association some recommendation as to what would be the best season of the year to hold our sessions.

Motion prevailed.

The President: I will appoint Mr. Battle, Mr. Shank and Mr. Charles E. Shepard on that committee.

Mr. E. C. Hughes: I think it would be well, Mr. President, not offering any criticism of the appointments made, because they are eminently good timber for that committee, but I think in considering a question of this kind there should be a couple of members of the committee from the other counties of the State, and therefore I move you that the committee be increased by two other members.

Motion seconded.

Mr. Shank: I will be very glad to accept that amendment of my motion, Mr. President.

Mr. Hughes: I see Mr. Sharpstein, of Walla Walla, sitting here, Mr. President.

The President: I will appoint Mr. Sharpstein and Mr. Hudson as members of the committee.

Mr. Austin E. Griffiths: Mr. President, I would like to suggest that a few minutes be given to a discussion of that matter. Now, personally I am opposed to any change. I do not believe that there could be more people from this city at

this meeting at any other time than this morning, and I would like to hear from outside members of the association.

The President: In view of the motion just carried I do not believe that would be in order at this time, but with Mr. Shank's permission——

Mr. Shank: I have no objection, Mr. President, and I will be very glad myself to have this discussion.

The President: Then we are willing to take up this discussion at this time. We will be glad to hear from any member on that subject.

Mr. Alfred Battle: I am like Mr. Griffiths, Mr. President. Of course I speak now simply from the lights before me on my present information, not as a member of this committee, and unless there is some good reason suggested for the change it strikes me as ill advised. I do not know of any season of the year that would suit the convenience of the bar of this State to hold the annual sessions of this association better than in the early days of July, after the courts have taken their adjournments for the summer vacation. It seems to me that while it is true that the members of the association do not attend the sessions as largely as it is desired, yet I do not think that that can be found in the fact of the session being held during the summer months rather than during the winter months or at any other period of the year.

Now, I am simply stating my impressions; I have given the matter no thought, and I simply want to say that I would certainly like to hear from any one who has a good reason to show why the meeting should be changed to another period of the year.

The President: Is there any other gentleman who wishes to express his views on this subject?

Mr. Shank: Mr. President, the purpose of making this motion which I did is not that I have any fixed judgment

to when would be the best time for holding these meetings. I have thought about it myself at other seasons of the year, when I have heard of the bar associations of other States being held, and it occurred to me that if the association is held at a season of the year while we are all actually in the harness and are down to business that we will find it very much easier to attend these meetings than when we are ready for a vacation. It appears to me that there is one other consideration which should be faced at this time, and that is, if we are going to get the practical benefit out of these bar associations that we should have, they should be held at a season of the year when the fruits of our labor here would be most readily reached. I am reminded that a great many of the bar associations of the East are held around the holidays; others are held later in the season, although I know of none, except the National Association, that is held during the vacation season. Now, if we held our session at or about the holidays, we would then be able to put into practical execution with the members of the Legislature any recommendations which we might make. The lawyers, who are supposed to be the makers of the law, or the aiders in that particular direction, are the ones who have the last to do with the making of the law. The Medical Association, if they want anything done, they will have their meetings make their recommendations, send their committee to the Legislature, stay with it until it is accomplished, but the lawyer simply takes satisfaction in getting his recommendations and stopping there. Now, if we had our meetings, it occurs to me, in December or in early January, probably more preferably in December, we would be in a position to put into execution the recommendations which we are going to make. Now we are going to have recommendations of a committee here upon the Torrens Land Law—land system of titles; I am expressing no opinion upon the matter, but if it is good

it ought to become a law, but it is now some seven months before the legislature convenes and in that time we have two months of summer time when we relax as much as possible, and I fear that it will meet the same fate as all other recommendations of the bar. Many of the suggestions made by the President are suggestions which should be put into some form where we can realize the fruit of these changes, if they are beneficial, and for that reason it seems to me that if we might have our Bar Association about the holidays we would have a larger number present and we would then put into execution our recommendations and accomplish something along the lines of the recommendations of the President.

These are considerations which occur to me as I stand here upon my feet and as my mind is refreshed from the general comment which I see in the daily press as to the time when other associations are held.

Mr. Wilson R. Gay: Mr. President, it was the committee that asked for suggestions, and on that account I only say this, that the reasons of the chairman of the committee you have just appointed, it seems to me, are reasons which ought to prevent change. In any event, the Bar Association can not afford at any time to turn lobbyists at the Legislature. The dentists and doctors that want some legislation to build a fence around themselves or a few of them, or to protect themselves, can afford to turn lobbyists, probably; but if the bar has its recommendations and its reports of its committees, with so many members of our profession in the Legislature, I think they would be urged.

Again, holding the Bar Association meeting about the holidays in a State as large as this, where it is a pretty hard scramble for most of us to get Christmas presents, why, we would not be able to get there and pay railroad fares across the State; and then I tell our brothers from across the mountains,

in that beautiful climate of watermelons and so forth, that it rains here like the old smoke generally about that time of year, and they could not have near the fun that they can have here in the summer time, just a few days after the court work is ended and we are all kind of exuberant and anxious to get a little shaking out of our legs before our wives get the things ready to go camping, and we can meet together and have a sort of a general good time before we start off on our vacation. And again, I know they do not have good skating east of the mountains in the winter time; we could not have the fun over there that we could in the summer time, and I think the bar, if they will reflect upon it, will do as Brother Dovell told me; he told me—he whispered it to me—that he has grown so old that he belongs to the conservative party—is opposed to all change.

The President: Unless there is some one else that desires to address himself to this question at this time, I think we had better not close the discussion until the report of the committee, and unless there is some other matters that may be specially suggested, a motion to adjourn would be in order.

Mr. Harold Preston: Mr. President, I move that the President request the visitors and members outside of King County who are here this morning to leave their names and addresses immediately upon the recess with the Secretary. I do that at the suggestion of several members of the Seattle Athletic Club who desire to secure visiting cards for them during the session.

The President: That I will do without putting it through the formality of a motion, and will request the visiting members present to leave their names and addresses with the Secretary immediately upon adjournment. The Secretary informs me that he has a book here for all to register in some time during the session—all the members. If there is nothing

further to be suggested, a motion to adjourn until this afternoon at 2 o'clock is in order.

Mr. Shank: I move you, Mr. President, that we adjourn until 2 o'clock this afternoon.

(Motion put and carried, and the meeting stands adjourned until 2 o'clock the same day.)

AFTERNOON SESSION.

Seattle Washington, 2 P. M., Thursday, July 7, 1904.

Meeting called to order at this time by the President, the President, Secretary and a quorum of members being present.

The President: As suggested on our adjournment for lunch, we will now take up the election of new members of the association. The Secretary will please read the names of those applicants that have been handed to him.

The Secretary: Mr. President, I have a great many applications here and they are all recommended by members of the association. I have an idea that it is not necessary to read the applications in full, only the names, which I will follow unless there is objection. The names are as follows:

(See List of new members.)

The President: Gentlemen, you have heard these names read; you can proceed to the election of them individually, or if you choose you can proceed and elect them as a class.

Mr. R. G. Hudson: I move that the rules be suspended. Mr. President, and the Secretary instructed to cast the vote of the association for all the names.

Motion seconded, put and carried.

The President: It is a vote, the Secretary will so cast the ballot. The next matter that is provided in the program is a

paper upon legal ethics, with special reference to the barratry law of 1903 by Will H. Thompson.

(Here followed the oral remarks of Mr. Thompson on the subject referred to, which was followed by a discussion.)

[This discussion became quite personal and for that reason much of it was omitted from the report, and because of that fact Mr. Thompson thinks it is not fair to those taking part in that discussion to publish his address and not theirs. Therefore the whole matter has been omitted with the idea that it shall be referred to a committee to report at the next meeting.—Secretary.]

The President: In view of the fact that we have been disappointed, or probably will be, in not having one of the papers read which is set for discussion and presentation tomorrow, and in view of the fact that this discussion has taken so much more time than we had anticipated, I think it would be well to adjourn at this time and take up the matters, beginning with the report of the Committee on Judicial Administration and Remedial Procedure, tomorrow, if that is satisfactory to Mr. Hudson, who represents that committee. Will that suit your committee, Mr. Hudson?

Mr. Hudson: If that is the desire of the meeting, it can go over until tomorrow.

The President: Mr. McDonald, will that suit you?

Mr. E. C. McDonald: Entirely satisfactory to me, Mr. President.

Judge C. H. Hanford: Mr. President, before adjournment, I would like an opportunity to present a matter very briefly to the association out of the regular program.

The President: Certainly, Judge.

Judge Hanford: Gentlemen, from time to time there is inquiry for copies of the Rules of Practice of the United States Circuit Court and the Admiralty Rules of the District Court. A pamphlet was printed in 1891, containing these

rules—I mean the local rules adopted by the Circuit Court itself and the District Court. That pamphlet is now out of print, and as a great many new lawyers have come into the State that have never had an opportunity to obtain a copy of the pamphlet, there is, as I say, frequent inquiries for copies of the rules, and what I want to suggest for the consideration of the Bar Association is the propriety of taking some steps to have the rules reprinted, and if they are to be reprinted they ought to have some attention to see what, if any, revision is necessary. I have in my hand a copy of rules of the Circuit Court for the Northern District of California, recently adopted and just now put in force, printed and published by the Bancroft-Whitney Company, and for sale at a dollar a copy. This is a complete revision of the rules of the United States Circuit Court for the Northern District of California. Some time ago Judge Heine, an eminent member of the bar of San Francisco, undertook to prepare the rules of practice for the United States Circuit Court, annotated, and he made quite a book with copious notes and references to decisions on questions of practice, making it really as valuable a manual of practice as any work of Federal procedure I have seen, resembling somewhat Desty's Federal Procedure. Before completing his work Judge Heine died, and it was taken up afterwards by Mr. C. Freeman, an author whom you all know of, but with nothing waiting for that work to be completed, as it was intended to be a work for general use in all the districts of the Ninth Circuit, if the different courts would adopt it, and as there was some doubt about its being adopted in the different courts, it was decided by Judge Morrow not to wait for that ratification, and he has had this pamphlet printed for use in San Francisco and the Northern District of California. It contains the rules of the Circuit Court as revised by Judge Heine after consultation with the judges and clerks and practising lawyers, as far as

could get an expression of their views, throughout the entire Ninth District.

I do not know whether Bancroft-Whitney Company or any of our local printers will be anxious to undertake the work of publishing a pamphlet for sale to the profession without some assurance that they will get the cost out of it, and what I would suggest is that this matter be considered by the Bar Association and that a vote be taken whether the Bar Association desires to have a pamphlet printed. I am speaking of it now in a way to get that expression of whether it is worth while to have a new pamphlet printed. If it is to be done the rules that are contained in this pamphlet adopted by the Northern District of California make a complete set of rules which are adaptable to the practice in this district, as well as in California, because it was prepared with that object in view, that there would be general rules of practice in all the districts of the Ninth Circuit.

In the revision of the rules some of the difficulties we have experienced in this district in practice have been dealt with. You know that the judge who usually presides in the United States Circuit Court in this district has a very strong prejudice against having any back talk from the bar after he has instructed a jury, in the presence of the jury, and exceptions to the instructions, the written or oral instructions given on the trial of the case, are not permitted to be taken orally in the presence of the jury. Cases have gone to the Circuit Court of Appeals in which that Court has refused to consider exceptions to the instructions to the jury, because it did not appear by the record that they were taken in the presence of the jury, and to meet the difficulty it has been the practice for the lawyers to stipulate to have a lie go into the record; that is, to actually take the exceptions after the jury has retired, but have the Judge certify that they were taken in the presence of the jury. It is

a very unsatisfactory way of proceeding. Now in the rules that have been adopted in San Francisco by the Circuit Judges themselves the actual practice in this district, conforming to the statute of this State with respect to the proper way of taking exceptions, has been embodied in a new rule, and probably the difficulty you have experienced heretofore will be after not embarrass you.

Mr. Hudson—Well, Judge Hanford, would those rules, as they say, suit us here—would we simply change the title?

Judge Hanford: Yes, I think so. Before having them printed I would like to have a committee of the bar go to the printer and see what there is to object to, or maybe there is no objection, but the question is whether the bar wants to pay anything in the way of a guarantee to a printing house, whether it is Bancroft, Whitney & Company or any local house, to make a sufficient sale of the rules to cover the cost of producing a pamphlet.

Mr. Preston: Judge, have you any intimation from a publishing house what their minimum guarantee would be?

Judge Hanford: No, I have not consulted with any of them about it, on any basis at all, and I do not know what it would require, or how much the cost of a pamphlet would be. This is quite a pamphlet and there ought to be added to it the Admiralty rules of the District Court and the Admiralty rules ought to be revised.

Mr. Orange Jacobs: How many pages have you got, Judge?

Judge Hanford: Including the index there are 103 pages. And in regard to the index you all know that we have a member of the bar in this State who has a genius for making indexes; that is Mr. Pierce, and Mr. Pierce has signified a willingness to render assistance in revising the Admiralty rules and indexing them.

Mr. Bronson: Mr. President, I think a great many of us recognize the difficulty that Judge Hanford has called attention to. Those rules are out of print and those rules are getting scarcer and scarcer all the time. It has come to a point now where I feel like hanging on to those rules more than I do any code in the office, and I would move that a committee be appointed by the Chair to report before the close of this convention what it will cost to obtain the printing of them—in other words, what we will have to put up as a guarantee for the printing of those rules—and with the understanding that the association have a sufficient number of copies in order to indemnify us, in the first instance, for that cost, if we should find it is advisable to have them printed.

Mr. E. D. Benson: I would suggest what I think nearly all the local bar know, that Mr. Pierce is doing a great deal of legal printing, and it occurs to me, and I suggest that for the thought of the committee, that it would appear to me if he got the index out that he would also like to print the book for the association and have the local sale, and perhaps he could do it better here than it could be done elsewhere.

Mr. Gay: I would like to second the motion. I think that it should go to a committee.

Motion stated by the Chair.

Mr. Griffiths: I think the committee ought to be instructed to confer with Judge Hanford as to whether any changes should be suggested——

Mr. Gay: That can be attended to afterwards.

Mr. Preston: I understand this is merely a preliminary matter to get the probable cost or the probable amount of guarantees before going further into the matter.

Motion put and carried.

The President: I will appoint upon that committee, the mover of the same (Mr. Ira Bronson), Mr. Charles Shepard

and Mr. Harold Preston, and ask them to report at their convenience tomorrow morning, if possible. The meeting now be adjourned until tomorrow morning at 10 o'clock. Members present will please register in the book which is on the desk here, and I also wish to announce, on the part of the King County Bar Association, that there is an entertainment provided for you this evening out at Madison, reached by the street cars, and every member of the County bar will constitute himself a member of the committee on entertainment and will be prepared to take care of you when you get there.

SECOND DAY.

MORNING SESSION.

Seattle, Washington, 10 A. M., Friday, July 9, 1904.

Meeting called to order at 10:20 A. M. by the Chair.

The President: The first matter on the regular order of business is the report of the Committee on Judicial Administration and Remedial Procedure.

The Secretary: Mr. President, before we proceed with the regular order I wish to say I have communications from several members of the association and others who were invited, expressing regret of their inability to be present at this meeting. It would take too much time to read them so, unless directed otherwise, I shall pass it with this mention.

Mr. Joseph Shippen: Mr. Chairman, I would like to make an announcement on behalf of the King County Committee of Arrangements. I have tickets for a banquet tonight on behalf of all visiting lawyers. I have given them out to some, but would like to give them out to others. The local members of the King County Bar Association who have subscribed will receive their tickets through the mail.

The President: We will now take up the report of the Committee on Judicial Administration and Remedial Procedure, Mr. R. G. Hudson, of Tacoma, Chairman.

Report of the committee read by Mr. Hudson as follows:

Seattle, Washington, July 7, 1904.

To Washington State Bar Association:

Your Committee on Judicial Administration and Remedial Procedure,

begs leave to report that it recommends to this association for consideration, the following subjects:

1. Establishment of juvenile courts.
2. Separate election of judges.
3. That the calling of grand juries annually be made compulsory in all counties of the tenth class and those having a population greater than the tenth class.
4. That the Supreme Court have power to formulate rules with reference to instructions to jurors; instructions to be prepared by counsel and submitted to court before argument; instructions to be delivered to and taken out by jury.
5. That the Supreme Court provide by rule that in all applications for writs in aid of the Court's Appellate Jurisdiction and in all other applications, where possible, the case be entitled the same as in the lower court, and that the opposite party be served with notice of application.
6. Any party desiring to appeal from a judgment or order of the Superior Court, claiming that such court committed any error not apparent on the record of said court, and who desires a statement of facts or bill of exceptions signed, settled and certified in order to present said error to the Supreme Court shall, when he files his statement of facts or bill of exceptions, file his assignment of errors with the same, so that the Superior Court, when signing, settling and certifying the same, may settle and certify the facts in reference to said assignment of error, and all errors other than those apparent on the record, outside of said statement of facts, shall be deemed to have been waived, but nothing shall prevent the Supreme Court from reversing, where any manifest error is shown by said bill or statement, although not assigned, if said court be satisfied that such prevented a fair trial.

Respectfully submitted,

R. G. HUDSON, Chairman,
J. B. HOWE,
J. C. WAUGH,
F. H. RUDKIN,
RALPH KAUFFMAN.

Mr. Hudson: Mr. President, the first subject, the establishment of Juvenile Courts, is one with which I am not particularly familiar, and was inserted in this report at the instance, I think, of Mr. Shippen, of the Seattle bar. How-

ever, I have some information in a general way with reference to the matter, and it seems to be one of the methods for the reformation of wayward youths, and of course is of vital importance to our State as going to make better citizens of the wayward boys of the country. As far as I am concerned I would like to hear from Mr. Shippen, or anyone who is posted on this subject. I am not very well posted about it myself, and, as I say, it was inserted in this report at the request, I think, of Mr. Shippen.

The President: Gentlemen, the paper is open for discussion. In view of the fact that we are somewhat crowded upon the program I shall have to call the attention of the meeting to the rule that no one is allowed to speak more than ten minutes in discussing these subjects.

Mr. Shippen: Mr. President, it appeals to the humanity of all citizens that during the period of adolescence due care should be taken of those who seem to be in violation of law, and it is a shame that all confess that in our larger cities of the State these juvenile offenders should be incarcerated with felons and that they should come in contact with those who may be steeped in vice.

Now, it may be a difficult problem what remedy can be provided, but in some cities, as especially in Denver, a method has been adopted of having an inferior court, as it were, called a Juvenile Court, and Judge Lindsey, who has given a good deal of attention to the subject, and who presides over that court in Denver, addressed the citizens of this city in the First Presbyterian Church last winter, both the bar and the community at large on this subject.

Now what legislation may be required to constitute such courts in this commonwealth I am not prepared to say, and it might be well to be considered by a committee of this bar and something drafted to submit to our Legislature which

meets next winter. I think that the suggestion may well emanate from this association, representing the bar of the State, putting its emphasis on this humanitarian side of administering criminal law to those who may be charged with derelections during the period of adolescence.

Under the intimation of your Chairman of the pressure of business this morning, I will not occupy your attention further than to emphasize the importance that is felt in this community of Seattle on this subject, and I presume it will be echoed by lawyers of other cities of the State, and I think these juveniles courts will be confined to the larger cities; and perhaps there will be little occasion for them in the rural districts.

Mr. Griffiths—Mr. President and Gentlemen: I would like very much to see this association give its most cordial and emphatic approval of the first recommendation of this committee. I am very glad that Mr. Shippen was enabled to bring it before the association. It is sometimes said, I think unjustly, that the members of the bar are more concerned with their own profession than with the interest of the public at large. Then again I think, gentlemen, that this State is rather behind other States in legislation of this beneficent character. That may be due to the fact that our population is sparse and conditions are not the same as back in the Eastern States, but it is true with our growing population the same conditions will be found here as there and the same problems presented, calling for the same solution.

Now, I think, gentlemen, it is pretty generally conceded that in this country, said by many of us to be the most civilized country in the world, crime is on the increase, and not in other civilized countries. I suppose that is due, at least I attribute it to at least two things more than to any others. The great stretch of frontier in our country and the people in that frontier country feel less the regulations and restraints of people of

more thickly settled communities; and next, the lack of parental control of our children. I would like to call attention briefly to the agitation that has been going on towards the attainment of this end suggested by this committee.

A year or so ago this matter was taken up in one of the psychological societies of this city, a very able paper was presented by Mr. J. F. Douglas on this subject, and we must bear in mind, gentlemen, this is no new thing; a juvenile court has been in existence and in successful operation in a number of Eastern cities, and this paper reviewed the entire situation and the result of that paper was that a committee was appointed to draft a law to present to the next session of our Legislature, which was done, asking for the establishment of a similar court, but, through the conservatism of the members of the bar on the Judiciary Committee of our House, the bill was smothered or not presented. Then the charity organizations of this city took the matter up; it was discussed at the State Conference of Charities and Corrections, at which conference Judge Griffin, of Tacoma, presented very ably, indeed, a paper upon the same subject, and the Women's Federation of Clubs in this city appointed a committee to draft a bill or to confer with other committees to secure a bill for the same end. The improvement clubs of this city appointed a committee for the same purpose and, if I am not mistaken, the matter came up before the Chamber of Commerce, of this city. I am not positive about that, but anyway, there has been a great deal of agitation towards getting passed at our next session of the Legislature a bill and, to me, considering that a very great many members of the Legislature will be members of the bar, I think that the hearty endorsement of this project by this association will go a long ways towards bringing about the passage of a proper law.

It may not occur to all of you that there is much need for

a law of this sort, especially among the members from smaller counties. I had occasion a little while ago to inquire as to the number of offenses committed by the juvenile offenders of this city. One large rental agency stated that the damage done to the property under the charge of this rental agency amounts to at least five thousand dollars a year, and that damage was practically done by the children of this city under the age of sixteen years. Several other rental agencies said the damage done to their property of one sort or another was very great. Another agency stated in writing, that the damage done by these little ones—young ones—amounted to at least a thousand dollars a year. Now, it is wrong that these little people should be taken into our criminal courts and tried as ordinary criminals and tried and sent to the ordinary jail and lock-up to which the ordinary hobos and criminals are sent. This is all wrong, and the purpose and object of this legislation is to secure a separate trial of these juvenile offenders, and not, if possible, to send them to jail, but put them under a probationary officer and give them one or more trials.

I think, gentlemen, Judge Griffin is here and it would be well to listen to him on this subject.

The President: Any further discussion, gentlemen, on this subject or on any other of the points recommended by this committee?

Mr. Hudson: Mr. President, the second recommendation is the separate election of judges, which is a matter of great importance, as all lawyers generally recognize. This association has declared itself heretofore in favor of this method of electing the judges, but the matter has not been followed up, as perhaps it should have been, in order to reach any results—that is, to secure legislation on the subject. The Constitution of the State would have to be changed with reference to the time of election of Superior Judges. The Supreme Judges

may be elected at any other time than a general election as the Legislature may enact, so, so far the Supreme Judges are concerned, there would be no necessity for any amendment, but as to the Superior Judges it would be necessary. But this is a matter of such great importance, it seems to me, to take the judges out of the realm of the traffic and trade of the political conventions, that this association should follow it up with a committee to secure necessary legislation on the subject.

The President: Any discussion on this point?

Mr. Gay: Mr. President, does that matter of the election of judges come up under any other head?

The President: No.

Mr. Gay: In your address it was referred to. I think the bar have already favored the separate election of judges and probably another expression should be added to it, but it has grown upon my mind that our Superior Court Judges and also our Supreme Court Judges are inadequately paid. Now, at the cost of living that is today prevalent throughout the land no lawyer can be four, eight or twelve years upon the Superior Court bench and then afterwards retire to practice and have saved anything; he can't even accumulate a home or be at all fitted to enter the ranks and get a practice. I think that it is a crying shame that the head of a cannery, who just simply is the business manager of that cannery, or the business manager of almost any other interest, who can do something else, is higher paid than our judges. From the Federal Court down the judiciary in this country is inadequately paid, and I have come so in contact with the judges, and seen them and their manner of living and the manner in which they get ahead is so much beneath—they are called upon to subscribe for everything—that I know—and when they spend their best lives they are inadequately paid, and I think there ought to be some concerted effort to increase the pay and to increase the

term, and I think that is a matter of enough importance to deserve the attention of this association. It is a fact that in this State many of our Superior Court Judges have had a hard time to get the practice they had when they went upon the bench and which their abilities entitled them to. Every other part of the report meets my views, but this subject, I think, is an important one.

Mr. Bronson: The subject brings to my mind, Mr. President, very forcibly a criticism which has been mentioned in our midst by ourselves with reference to the purpose and the use and the usefulness of this organization. Now we hear a paper read here which touches the consciousness of every lawyer here; we hear it discussed and the next year we will hear the same thing discussed again, and we do not take any further interest in it more than simply to have a desultory discussion among ourselves on the subject, without looking for any final action or the procurement of any result whatsoever here.

Now, if this Bar Association lacks a stimulus—perhaps the lack of results from its expressions and meetings is the lack of stimulus itself—if we believe, as I guess we all do believe, that the bench, calling as it does for a high order of intelligence and integrity and a great amount of labor, painstaking labor, is inadequately paid, and with no provision yet made for its proper election or its proper appointment, its election as to individual occupancy, why do not we undertake some means of procuring the change that is needed? We see the greatest ability in the land devoted to the services of the Federal bench because there is great honor attached to that office, because it commands the highest respect in all the land. The pay of the Federal Judiciary of this country is ridiculously small, considering the amount of labor that is involved in the administration of law in the Federal Courts, but it is undoubtedly true that the emoluments of this office are considered a small

part of the reward, compared with the honor of being a member of that bench.

Now, in the case of the elective judiciary of this State we have a scramble for office, among the friends of those who are aspirants for that office, perhaps, more than among the aspirants themselves, but that is a condition of things obtaining here which does not meet with the approval of anybody. We realize, perhaps, that the judges are inadequately paid—ridiculously paid—in the amount of compensation they receive, and yet we take no steps here in this Bar Association to bring any change in that respect. That is one of the things that we ought to take enough interest in to procure some steps to be taken in the right direction. It has been said that we ought not to go to the Legislature and lobby; I do not consider that this association or any member of it in attempting to procure a needed reform or any step we may think fit to take, that it is an act that can be condemned by anybody; and I do believe this Bar Association of the State of Washington can not only increase the interest in its own deliberations and meetings among its own members by taking practical action upon these things, but that we could render a great service to this State and the people by undertaking some practical means of accomplishing the results which we all know ought to be accomplished.

I have not considered myself any practical means of carrying it out; I simply say we ought not to take up, year after year, consideration of subjects and then pass them by with an idle discussion. It does not seem to me to be compatible with the dignity of the association or our members.

The President: So far as carrying into effect any legislation which might be adopted by the association in respect to this matter, Mr. Bronson, which I think is very well suggested by you, our Constitution provides for the appointment of com-

mittees of that nature. If it is the sense of this meeting, a committee should be appointed to draft the necessary bill or bills and see to their enactment, if possible.

Mr. Hughes: Mr. President, I move you that a committee be appointed by the Chair, consisting of five members, to draft the necessary legislation on this subject and present it to the next Legislature.

I entirely concur in what Mr. Bronson says, that there is no impropriety in the members of the bar of this State endeavoring to secure the right kind of legislation at any time and in seeking to aid the members of the Legislature as to what is the right kind of legislation. Now, it seems to me that this is a matter of great importance. It is evident that the members of the Supreme bench of this State and the great majority of the Superior Court Judges are utterly disheartened as to any practical results being accomplished by the meetings of this association. That fact is apparent because they never attend our bar meetings, and I do not see any other reason, and I think we ought to encourage them to attend these meetings and let them understand we are interested in them and in their work, and that we purpose to make these meetings interesting and valuable, not only to the members of the bar, but to the judiciary as well. I would like to see a resolution, at the proper time, expressing a regret that they do not join with us in our meetings, passed by this association.

Mr. Hudson: I would suggest that when we get through with this report that that would be a very proper motion to make, so as to take up all these matters we pass upon and approve.

Mr. Hughes: I withdraw the motion at the present time, then, on the suggestion.

Mr. Hudson: My idea was, perhaps, to take up these different subjects separately for discussion.

The President: I did not so understand it, but fortunately we have already proceeded upon that line and have reached the discussion of the second heading, "Separate Election of Judges." Is there any further discussion on this head desired? If not, we will proceed with the other.

Mr. Hudson: Mr. President, the third subject is the calling of Grand Juries. Of course we know that the law against certain classes of crime is not enforced at all in some localities in our State. This is unfortunate because it begets a disrespect of the law and it begets crime and it produces bad results in vitiating the body politic and particularly the young, and under the system which is pursued to inaugurate the prosecution of crimes in this State the burden seems to fall upon the prosecuting attorneys. They are either unwilling or they are unable to sufficiently prosecute some crimes to even make them keep under cover. I do not know whose fault it is, and I will not express an opinion on that subject, except I think that the fault might be somewhat remedied by having grand juries to meet every year to investigate these crimes and all other crimes, of course. There is considerable advantage in a grand jury over the prosecuting attorneys in this respect because they are secret inquests, they have the right to compel the attendance of witnesses and the giving of testimony; the grand jury is composed, or supposed to be composed of the best citizens of the county, selected from different sections, and they are supposed to be informed as to what is going on in their respective communities and are able to get much more information on the subject of violations of the law, and furthermore, as it is secret, witnesses are willing to go before the grand jury when they would not be, perhaps, to report crimes to the prosecuting attorney. The prosecuting attorney under the law has no way, at least I think he has no way of putting a party under oath to get information with reference to crimes. It was

suggested by one member of the committee that this would be rather burdensome financially to require the smaller counties to have grand juries and limit was placed on the recommendation on that account. So far as I am concerned, I think that it would pay well all of the counties to have grand juries at least once a year.

We may criticise the grand jury system, but I have had the observation of both systems and I am satisfied that we need grand juries in this State very much, particularly at this time, and the committee, therefore, made this recommendation.

The President: Gentlemen, is there any discussion of this third recommendation of the Judiciary Committee, that the calling of grand juries annually be made compulsory in all counties of the tenth class and in those having a population greater than the tenth class?

Mr. John P. Hoyt: Mr. President, I am disposed to disagree with the recommendation of the committee in that regard. I have, like the gentleman just preceding me, had experience under both systems, and my experience has been that no profitable amount of good comes from the grand jury system. I think it is clear that any good which can be accomplished is sufficiently accomplished now. The judges have now the authority to call a grand jury at any time, and if any such state of affairs arises which makes it desirable that a grand jury be in session, I think the judges of the courts may be depended upon to call a grand jury, but to make it obligatory to have them meet, I myself believe would not be in accordance with public policy. I believe the system itself is wrong; I believe a secret inquisition is not in accordance with the policy of our government and should be avoided except in case of great necessity, and I think it is sufficiently guarded at present.

Mr. Shippen: Mr. President, I would say a word in very

hearty concurrence with the report. My personal experience with grand juries has been in the State of Pennsylvania, and my observation of the system there has convinced me that it has a great and far reaching effect in the education of the citizens and in instilling into their minds a proper sense of the duties of citizenship. It was a matter of education to twenty-three of the leading citizens of the county; they came better to understand that this is a government of the people and by the people and for the people, and in the Federal court the instructions given to grand juries throughout the country educates the people in their relations to the State and Federal government in a way that strengthens our institutions.

That is one argument in my mind in favor of the grand jury system, and I heartily concur in the argument presented by the chairman of this committee, and I think our experience in this State teaches us that we should have more grand juries and that less responsibility should be thrown upon the prosecuting attorneys upon whom the duties to be performed by a grand jury devolve at the present time.

Mr. Hudson: Mr. President, I do not suppose that the frauds that existed for so many years, under a regular organization, in the city of St. Louis would ever have been unearthed unless there had been a grand jury, and I think that is sufficient argument in favor of a grand jury.

I have not known but two grand juries being called in the State of Washington since I have been here, and I believe they had to be called under the pressure of a petition on the part of citizens. The Superior Judges do not exercise this right unless it seems they are braced up to do it.

Mr. Jacobs: Mr. President, I am absolutely opposed to the grand jury system. Our experience in this county is sufficient to convince the people of this county that grand juries do not accomplish the purpose that they are called to

accomplish. Now, in early days, while this was a Territory, we had a grand jury at every session of the court. The grand jury then seemed to accomplish its purpose; the sole responsibility was devolved upon them under the charge and direction of the court, and they accomplished things—they did things; but since there has been, under the Constitution, a divided system of responsibility, grand juries, judging their effectiveness from the experience we have had in this county, are an expensive farce. The last grand jury that we had in this county I think found some—I am not certain about the number—some fifty or sixty indictments. Not a single person indicted by that grand jury was ever convicted. Most of them were discharged by the court without a trial.

Now under the system as we have it, the responsibility ought to be cast upon the prosecuting attorney. He ought not only to be a good lawyer, but a man of moral courage that would act upon his convictions. Put such a man as that in office, banish your grand juries, make him responsible for the enforcement of the criminal laws, and you will accomplish practical results. But whenever there is organized a power or an organized system for the purpose of countenancing the violation of statutory law in this State my observation is that there is a disposition on the part of the prosecuting attorney to shift the matter on to the court and to get the court to call a grand jury.

Now, while I had the honor to be upon the Superior bench of this county, a grand jury was called. I voted against calling that grand jury. It resulted precisely as the last grand jury that we had in this county. Enormous expense was piled up against the county and it seemed almost impossible to make that grand jury let go their hold. However, the court had to peremptorily, as I understand, dismiss them. The results of their investigations turned out to be as abortive as this last

grand jury. It resulted in nothing whatever only to make the law, the criminal law, as administered in this county, a farce. Prosecuting attorneys shoulder the responsibility upon a grand jury, and wherever you have a divided responsibility you will have results that are not at all satisfactory.

Now I say that the only course is to hold the prosecuting attorney responsible, as the law enforces upon him the responsibility for the enforcement of the criminal laws of this State, without fear or favor, and when he fails in this responsibility, when he knows that there is no division, that he can't shift this responsibility on the court by asking the court to call a grand jury, why, then you will accomplish effective results, or, if you have a different system, as they have in the Federal court, you have the same effective results. There the grand jury amounts to something because there is no divided responsibility, but this double system has resulted in failure and ever will result in failure.

Mr. Gay: Mr. President, I am going to quite thoroughly agree with Judges Hoyt and Jacobs. I am quite confident that the grand jury system would accomplish nothing in the administration of justice in this State. I can see that. It is my opinion that it would be a rare thing that a bill of indictment would be returned by any grand jury if a prosecuting attorney before the grand jury did not want it. It is true, and I know that from experience that it is true, that many grand juries will not return a bill when there is cause for it and reason for it—I have had experience for five years with grand juries—and another grand jury called a little later would take the matter up. Human nature is so peculiar that, after they would find five or six or seven indictments they would get a little tired of indictments and they would want to show their independence and their impartiality by turning some scoundrel loose.

Judge Hanford (and I refer to him, though he is present) I think turns the Federal grand jury to the only practical good that was ever accomplished by it, and that is the method and manner of charge to the grand jury. I have observed in the last five or six years particularly, I think that I noticed it much before, that he emphasizes the grand jury that one of the purposes for which they are called was to observe how justice was administered in the court in the court room so impartially that they could give among the people and when they were among the people could say that our justice was administered honestly and rightly, and as an educational matter it is about the most practical good I ever saw in a grand jury.

Mr. J. G. McClintock: I concur in what my friend Jacobs has said. The divided responsibility is a bad thing. I have no objection in counties of the tenth class and counties more populous than that, for a prosecuting attorney, however able, may not be able to reach all classes, and a grand jury may be necessary, and in those counties where responsibility may be placed upon the grand jury, or could be under a system somewhat different from ours, a system such as obtained in the State to which I came before coming to Washington Territory, why, a grand jury there might be a good thing, and I have no objection to it, but my experience has been chiefly in counties below the tenth class in this State and my observation has been that a grand jury has not resulted in any good whatever in those counties. I do not say that a grand jury will result in any good in any county in this State, I do not think that it would be efficient in doing anything which any honest, effective prosecuting attorney could not just as well do a little better do without the aid of the grand jury.

Mr. Benson: Mr. President, as one who has had considerable experience with grand juries, I am inclined to believe,

do believe that under our system and under our Constitution, under the powers given to the prosecuting attorney by the Constitution, a grand jury is of practically no benefit to the law of the State.

As I sat here I tried to think of something this association might do to assist in the workings of the criminal law of this State, and it seems to me if there is anything it would be the condemnation of a practice that has grown up entirely regardless of politics in the State, and for which no individual, it seems to me, is to blame, and that is the feeling that as to certain classes of crime it is entirely discretionary with the prosecuting attorney, if he feels it his duty, simply because he may think a jury, a petit jury, would turn the party loose, not to issue warrants. It has never seemed to me that a prosecuting attorney should have, or that the Constitution of the State intended that he should have, absolute power in that respect in a clear case where there was no question of violation of law, to refuse warrants. Yet I know that responsibility must rest somewhere, and if there is anything that this bar can do it is in the generation and the keeping alive or creating, you might say, a public sentiment in favor of the punishment of the violation of the law, entirely regardless of who happens to be the violator. There is a feeling at large that if one has power and influence and friends enough that he can almost do anything in our State, if he does it sufficiently under cover, without prosecution. I do not think a grand jury is much better than the prosecuting attorney in that respect. I believe that all we can do here is to foster, as far as possible, a feeling among the people, a desire upon the part of all and a unanimity to the fullest possible extent that the law should be enforced in whatever manner it may be, and as long as the prosecuting attorney has the power that he has now in this State, that pressure be simply brought to bear upon him. He is an

absolute Czar, as I understand it, and nobody else has the right to meddle with him, any further than public opinion has its effect on all officials. He is in control over the courts, as I understand it, the court has practically no control over him, and public opinion, in my opinion, alone can change him.

Mr. Griffiths: Mr. President, like the young gentleman who spoke yesterday, I feel very strongly upon this particular question. I am sorry to see so much opposition shown to the system known as the grand jury. I am a staunch admirer of the jury system and a firm believer in its usefulness; whether or not we make it useful is wholly dependent upon ourselves, and one great part of that system is the grand jury. I say, gentlemen, it will be a sorry day for this country if any part of the jury system falls into disuse, and in our country it is getting so that a young man scarcely knows what a grand jury is.

Now, I have been in this Territory and State fifty-two more years; I have seen both juries tried, and I believe that crime could be better regulated and checked by more frequent investigations under the responsibility of a grand jury.

In answer to one gentleman I wish to say this, that the last grand jury that convened in King County was one of the best, was one of the most independent and fearless grand juries that ever adorned the grand jury system in this country or in any other country, and that if it failed its failure was due to the grand jury part of the system, but to lack of co-operation with that grand jury by the office of the prosecuting attorney of King County. We all know that a grand jury can accomplish much without the co-operation of the prosecuting attorney, and we also know it is the duty of the prosecuting attorney to guide and assist any grand jury.

I regard the grand jury system, the use of the grand jury as one of the greatest educators of our people and that in

tion as one of the bulwarks of our liberties and of our institutions. Now, why do we need a grand jury in this State? Because in many instances, gentlemen, our prosecuting attorneys are young men, inexperienced men and men who lack the responsibility to institute these criminal cases. Why? Why, they say the taxpayers will grumble at the cost if it does not turn out successfully, or some association of men, political association, will grumble. A criminal can more easily control one man in the prosecuting attorney's office than he can control twenty-four grand jurors called together from time to time from the body of the county.

Mr. Frank D. Nash: Mr. President, it seems to me this matter should be brought before this meeting in such shape that it can be voted on. My understanding is that the recommendations are all presented—that a committee was appointed to make recommendations to the Legislature. It seems to me that where we can we should eliminate the different branches of these reports as we go on, and to try to get this matter before the meeting, I move you that the recommendation made by this committee in regard to the calling of grand juries, that we do not approve that recommendation—that this meeting do not approve it.

Motion seconded, and on a rising vote was declared lost.

The President: Are you ready to take up the next subject, Mr. Hudson?

Mr. Hudson: The fourth recommendation is that the Supreme Court have power to formulate rules with reference to instructions to juries; instructions to be prepared by counsel and submitted to the court before argument; copy of instructions to be given jury.

It was thought by the committee that it would be better to have the matter referred to the Supreme Court by the Legislature than to pass an act fixing the method of instructing juries,

because the Supreme Court would likely appoint several competent attorneys to prepare rules and those rules would be submitted to that court, and have them approved by the court. So that it would meet the idea of the committee of this association, if the association sees fit to adopt this idea, to recommend that course. The rules could be changed from time to time, if necessary, by the Supreme Court without the enactment of a new law or an amendment to the law. I expect there are a number of gentlemen here, perhaps, who have practiced both under the system that is recommended for instructing juries as well as our present system, who will be able to compare the merits of the two systems. I have myself, and it is my judgment that the system recommended by this committee is far preferable to the one in practice in this State and in the Federal court. As there are other gentlemen who have had experience along this line, why, I will not take the time of the association.

The President: Is there any discussion of this branch of the committee's report, gentlemen?

Mr. W. H. Thompson: Mr. President and Gentlemen, I think it goes without saying that some such development of our system of instruction to juries is absolutely necessary in order to make the law anything like a science in this State. Of course there are a number of States in the Union that have practiced for many years under a somewhat similar rule. For instance, in Indiana (I presume there are a number of Indiana attorneys within the sound of my voice) we had a section, remembered by every lawyer, No. 534, that was passed by the Legislature about thirty years ago. The bar of Indianapolis, with such men as Harrison, McDonald and Butler at the head, formulated the section and lobbied it through the Legislature, and there was great opposition to it, but of course the Bar Association stood by it, and that section, instead of provoking

opposition after it was put into the code, there has never been in the thirty years that followed the slightest attempt to modify it or repeal it, and every lawyer of the State is thoroughly in love with it and it has operated perfectly. An attempt was made either four or six years ago to get a similar section into the code of this State. I remember Mr. Harold Preston, of this bar, was chairman of the Judiciary Committee, and some such section, but in an involved form, was brought before the committee. The committee seemed to take kindly to it except it seemed to be badly worded, and a number of lawyers from different portions of the State were invited to come before the Judiciary Committee (I think it was the Joint Judiciary Committees of the Senate and House) and among others I was favored with an invitation to appear there, and I addressed the committee upon the propriety of changing it to the idea contained in the Indiana code, and so pleased was the committee with it that they requested me to prepare a copy of that section and submit it as an amendment so the committee could pass upon it. I did so, and it went through the committee, but I do not know how, but somehow, the bill was lost in the House. That section provided simply this, that judges upon request should give their instructions in writing; second, that any instructions which were requested should be either given or refused and so endorsed upon the margin; if endorsed to be given, then the instructions could be read to the jury in the argument of the case as law in the case, and commented upon as such, and that the jury should take the instructions to their jury room.

Now there were a number of attorneys who appeared in opposition at that time, upon the theory, as they expressed it, that they appeared most often for the defendant and it seemed to them it would give the plaintiff in the case an advantage from the fact that he had the last argument to the jury and could

take the instructions that seemed to bear most strongly in his favor and argue them with great force to the jury and it would give him an undue advantage. But I could see nothing in that, because the instructions could be commented upon before the plaintiff took hold of them by the defendant's counsel in his argument before the closing speech and there would be no reason why the exact meaning and force of the instructions could not be brought before the jury so they could understand them.

Now, it is a truth—it may be denied, but it nevertheless remains the truth—that instructions given to juries by courts are not understood. Every practising lawyer knows that jurors come to him after a trial is over and give the most wild and foolish ideas of what the instructions given by the court were. and it is not wonderful that it should be so. They have not studied law, they have not reasoned along legal lines, they are not familiar with legal diction; the instructions are prepared in legal diction and they are more or less carefully drawn, not so much with the intention of making them perfectly clear to ignorant minds, ignorant upon legal questions, but for the purpose of being careful to state within certain legal lines the proposition of law that it is intended to submit to the jury. Then they are read one after another to the jury, perhaps twenty or thirty instructions, the jury goes out, there is scarcely one of them that can remember or understand or discriminate between the different instructions and what they really mean. Usually, if the case turns upon some vital point and there is a pivotal question of law in the case, and if there is one or maybe two, instructions upon that point which clear up the clouds, the attorneys on either side can take those instructions marked to be given by the court and can go to the jury and say, "Gentlemen of the Jury: His Honor will instruct you this, His Honor has already endorsed this instruction to be

given as law in the case, and His Honor will give you this instruction as the law in the case. Now, let us analyze this instruction and see how it applies to the facts in the case and how it hurts and how it helps." It clears the whole case and it enables the attorney, be he the attorney for the defendant or the attorney for the plaintiff, to go to the jury and argue to them, knowing what the vital questions of law in the case are and what the court is going to say to them upon those questions. Now we do not know what the court is going to give as the law in the case, and the attornyes go forward to the argument like skaters on ice that will hardly bear them, and at the close of an attorney's argument to the jury the court may give his instructions in such a way as to leave his whole argument in the dark and in confusion, and I think that no attorney, be he for the plaintiff or be he for the defendant, need to fear that the clear truth shall come out or that the clear law shall be understood by the jury in the trial of the case, and I think some such proposition as this is that is now advanced, that the Supreme Court perhaps aided by the consensus of opinion of lawyers of the State, may draft a certain plan of instructing juries, that it will help us in the trial of cases very much more than our present proceeding helps us.

Mr. Gay: Mr. President, I want to only say that I think that sort of procedure makes less appeals; I think that is the record of those States that use it to the exclusion of others, and in order to the shortening of this debate, if you will entertain it, I want to move that the entire report of the committee be adopted. We have read it all and it will probably shorten the debate and then we can hear Mr. Macdonald.

The President: We have already committed ourselves partially to the other way and we will have to proceed. I will

entertain a motion for the adoption of the report when this present section is approved.

Mr. Gay: Well, I will make it, then. I move, Mr. President, that this section of the report be adopted.

Motion seconded, and declared carried.

Mr. Hudson: Mr. President, the next section I will get Mr. Reinhart to explain, as he is more familiar with it than I am.

Mr. C. S. Reinhart: Mr. President, the fifth recommendation is "That the Supreme Court provide, by rule, that in all applications for writs in aid of the courts Appellate Jurisdiction, and in all other applications where possible, that the cause be entitled, the same as in the lower court, and that the opposite party be served with notice of application."

This recommendation is simply for the purpose of simplifying the practice as to statement of facts in the Supreme Court. I have no doubt you all know that the court has decided that there are some cases of this character in aid of the court's jurisdiction in which they do not allow costs; in other words, that the costs would probably depend upon the final determination of the case.

Now, it seems to me that it would require more of an argument, if the Superior Court should fail to settle a statement of facts, that it is necessary to change the title of that case when you went to the Supreme Court for a writ of mandamus, than on the other hand that the title should remain the same. It is the same case, but under the practice now, when you go to the Supreme Court for a writ of mandamus it is entitled on the relation of so and so against the Superior Court. The party in interest is not necessarily served with the process; the court is served. The case is taken to the Supreme Court and docketed, you pay a three-dollar docket fee for the relator and one dollar docket fee for the respondent. It is an appeal

case, however; that is, it is a case in which you are bringing this proceeding in aid of the court's Appellate Jurisdiction. After you get the case docketed and after final determination you go back to the Superior Court and you come up on appeal and you have got to docket it again as an appeal case because they are different parties in the case, another set of fees has to be paid, and, as I say, probably in the first instance that is one of the cases in which the court will not allow costs, and then under the procedure now you can't even recover your costs in the special proceeding in the appeal case. The fact of the matter is, there is no cost in it that could probably be recovered for except the docket fee, but that much would be saved, and I think further it would be a little benefit to the bar, as you have your case docketed once there will be no necessity to ever docket it again and it would prevent confusion possibly when the cases are brought on for assignment. A good many of the attorneys remember there is some confusion about that, about getting their cases on the calendar, because remembering that they have had the case docketed once they do not consider it is necessary to docket it again—they overlook that fact, and frequently cases are not docketed in time to be placed upon assignment when otherwise they would have been regularly assigned.

Then the necessity of the service of this process upon the party beneficially interested. The court has held in one instance in which application was made for a writ to the court that service of the petition was properly made upon the court. The attorney, as a usual thing, is presumed to appear for the party beneficially interested, and he usually appears as the attorney for the court. There is nothing whatever in the record to show that the attorney appears for the party beneficially interested, consequently if it is a case in which a judgment can be entered for costs, there is nobody against

whom to enter costs. You can't enter costs against the court, and the party beneficially interested has not appeared. The result would be that you have to make a showing, as a matter of fact, before the court, before you can get a judgment in the case that the party beneficially interested has actually appeared by that attorney, or that attorney has represented the party beneficially interested.

I think that is all I care to say.

Mr. L. T. Turner: Mr. President, I move the adoption of that fifth paragraph of the report.

Mr. Hudson: I would suggest that we act on the whole of it and when we get through act on the whole report.

The President: We might not adopt the whole report.

Mr. Turner's motion was duly seconded.

Mr. Benson: Mr. President, I would like to inquire of Mr. Reinhart if he has considered this question; it seems to me that either the statute or the Constitution, probably the statute, is opposed to it in this, that those writs are required to run in the name of the State, and if that is true, can it be changed by rule of the court?

Mr. Hughes: That does not interfere with the running in the name of the State—the matter of the application.

Mr. Benson: I understand the Supreme Court has ruled upon the question, and that being so it would be all right to pass it. I thought we did not want to run contrary to either the Constitution or the statute.

Mr. Turner's motion put by the President and declared carried.

Mr. Hudson: Mr. President, I would like to ask Mr. Howe to explain the sixth proposition in the report.

Mr. James B. Howe: Mr. President, the sixth proposition is for the purpose of brevity in the record, and also presenting

to the Court of Appeals the facts necessary in order to enable them to consider the errors assigned.

As the law now stands in the State court you file your assignments of error or make your assignments of error in your behalf. At that time, however, the statement of facts has already been settled. Now the object of this provision is that at the time the court settles the statement of facts or bill of exceptions he shall know what errors the party appealing relies on, so that the bill of exceptions or statement of facts will present the matter necessary to a consideration of those errors and those only. If the errors are not assigned until after the statement of facts or bill of exceptions is settled, then it may be that the party who has prepared his bill of exceptions or statement of facts may have left out some matter that the respondent at that time did not think important, but which becomes very important after the error has been assigned.

Now if when the court settles the statement of facts or bill of exceptions it knows just exactly what errors the appellant relies upon, then it can see whether the record properly presents the facts necessary for the consideration of the errors assigned; otherwise it can't. That is the object of that provision.

Mr. Hughes: Mr. President, I want to express an objection—I do not want to take any time, because we must hurry through. I see no objection whatever to this practice where a shorter record is made, but where the statement of facts undertakes to take up the entire record there can be no reason why an assignment of errors should be made at the time it is proposed and it often would entail double work upon the appellant.

I think when a short record is made, anything less than a full statement of facts is made, there is much to commend the recommendation of the committee, but where the appellant pro-

poses to take up all the facts in the case it seems to me that the recommendation should not apply.

Mr. John P. Hartman: Mr. President, as I read this I do not exactly understand the application of that recommendation. It is a little questionable there just what is meant by "the record." I take it, however, that it means the usual transcript of the testimony from the shorthand report and probably includes the pleadings and orders and so on, and "not apparent" and so on; I do not know how it would be possible in a statement of facts that contains all the evidence and all the pleadings, how it would be possible to claim an error if it was not there apparent. It could not be hid away somewhere in some unknown recess, or between the lines and written in afterwards; but as Mr. Hughes has suggested, if it is a short record the rule, then, is that you can not go outside of the short record. Of course that is all there is before the court, yet if there was something else done that had not gone up it is too late to remedy it. I do not see, as I understand this, how it would assist us any in taking our cases to the Appellate Court.

Mr. Howe: Mr. President, Mr. Hartman has evidently not understood the language of the section. A bill of exceptions or statement of facts does not become a part of the record until it is settled and certified. Therefore, when the section uses the expression there referring to the "record," the record constitutes all the pleadings, journal entries and such matters as would go into the transcript. If the error appears in the matter that would go into the transcript, it is unnecessary to put it in the bill of exceptions or statement of facts, but by filing your bill of exceptions or statement of facts you do not make that a part of the record; it becomes a part of the record when the judge certifies the statement of facts.

Now, this section provides that as to any matter not apparent

on the record, that is, on what would be in the transcript, if a party desires to urge any error which should properly appear in the statement of facts, he must, at the time he files his statement of facts, assign that error. That is for the purpose, as I said, of enabling the judge when he settles the statement of facts to see that all the matters necessary to properly present the errors assigned outside of the transcript to the Supreme Court is in the statement of facts, so it can be considered. That is all.

Mr. Hughes: Mr. Howe, what do you say as to the necessity of doing so where the certificate of the judge is that the statement of facts contains all the facts:

Mr. Howe: I do not think there would be any object gained in assigning your error in a matter of that kind, provided the whole statement of facts goes up. This was for the purpose of accomplishing the shortening of statements of fact.

Mr. Hartman: That can be done now, can it not?

Mr. Howe: That can be done now to this extent: you can shorten your statement of facts now, but supposing no amendments are filed at all, suppose you file a defective statement of facts, respondent may be misled, he may be careless, he may not examine it to see, or he may not have appreciated the fact that the appellant is going to urge some legal proposition and not put into his statement of facts the matter necessary to present that to the court.

Now you take the practice that prevails in the Federal Court. I remember that a couple of years ago a statement of facts—I was not in the case, had nothing to do with it—and bill of exceptions was presented to Judge Hanford. The Federal Court practice provides that at the time you sue out your writ of error or take your appeal you shall file your assignments of error. Now you understand, of course, that is done before your briefs are filed. Now, I think Judge Hanford had a

good deal of difficulty in settling the bill of exceptions because the party representing the defendant in error, or the respondent, was claiming that everything should go into that bill of exceptions because he could not tell what errors were going to be assigned in the Appellate Court. I have had the same difficulty in the State Court, and I presume every lawyer taking up a case has been confronted with the respondent claiming to the court, "Why, your Honor, I do not know what errors this man is going to assign when he gets me into the Supreme Court and therefore you should put the whole evidence in." Well, in many cases you put the whole evidence in, and with all due respect to the Supreme Court, and I do not mean it as a criticism in any way, but when you find five judges laboring with the transcripts they labor with now and they see two or three thousand pages of typewriting to go through with, I think it is no disrespect to the court to say that that judgment is going to be prepared without very much attention being paid to the statement of facts. A man gets tired; it is no criticism on the bench; any lawyer knows that he will get mental dyspepsia if he has to wade through two or three thousand pages of testimony in order to pick out one little point that could have been raised, perhaps, in ten or fifteen lines.

Mr. Hughes: Mr. President, to save any further question or discussion, I move you the adoption of this paragraph of the report, except that it shall not apply to statements of facts of bills of exceptions containing all the facts occurring upon the trial.

Mr. Hughes' motion duly seconded and put by the President.

Mr. Winfield R. Smith: Mr. President, I am opposed to Mr. Hughes' motion for this reason. I think the point is a perfectly good one, but I think the practical results, the practical operation of his motion, would be that the statement and the entire statement of facts would go up more generally, if

possible, than it does now, and therefore instead of relieving the Supreme Court and assisting them, I think we would be burdening them all the more.

Mr. Hughes' suggestion is a very good one, but when we do not want to take time to go over it, we will send up the whole record; we do that now, and if his motion is adopted we would send up the whole record almost every time rather than to get down to determining just what assignments of error we wish to urge and rely upon so early in the appeal. Therefore it seems to me we should either leave our practice as it is or else adopt the recommendation of the committee entire. We should either follow the practice of specifying our exceptions, our assignments of error, when the statement of facts is settled, or else in our briefs, as it is now, because practically we will defeat the purpose and aim of this recommendation and we will overburden the Supreme Court then further than they are now with full transcripts.

Mr. Hudson: What is the question, Mr. President?

The President: I will ask Mr. Hughes to again state his amendment, and the question is on the amendment.

Mr. Hughes: I move the adoption of this report, providing it shall not apply where the statement of facts or bill of exceptions contain all the facts occurring on the trial.

Mr. Hughes' motion seconded, put by the Chair and declared carried.

Mr. Hudson: I move the adoption of the report as amended as a whole, Mr. President.

Mr. Hudson's motion duly seconded.

Mr. T. L. Stiles: Mr. President, I have not said anything on this subject before, but now it is up I want to urge a word. I am opposed to this because I am opposed to confusing this matter of statement of fact and errors any more than it is now. I think we get along very well as it is. I can not conceive

how an attorney can take an appeal and prepare a bill of exceptions, which is a part of the statement only, without making some such specification as this, declaring his intention beforehand, and expect to go to the Supreme Court and not go out of court on the proposition that he has not got all the facts there relating to it, because the court below certainly would not certify a statement of facts which would be less than a full statement unless it was with some such qualification. I have always tried in my own practice in taking cases up to take up less than the full record, and I never considered I was safe at all in doing so unless I did specify when I furnished my statement of facts to the other side that I proposed to appeal only on certain propositions. That was warning to them to look out that everything in the case pertaining to those questions I proposed to urge was in the statement of facts. For instance, I might want to assign as error the admission in evidence of a promissory note; we will suppose the other side alleges it was a forged note or that there was some deficiency about it. Now I object to the admission of the note in evidence; the only testimony necessary relating to that subject is all the testimony relating to that note, but unless I qualify my statement beforehand, why, the court above will say, if the other side will point it out, that I have nothing there to show that was all the evidence on that subject, and I would be out. The fact is, the practice has grown up so that everybody, almost everybody, at least, practically takes up a full statement with a certificate of the court that it is all the material facts in the case. That means that is all the evidence in the case. When you have got all the material facts, why, there is no necessity for any qualification, and I think it will confuse things here if we go any further with the subject.

The President: The motion, gentlemen, is to adopt section No. 6 as amended.

Motion put by the Chair and declared lost.

The President: Now, gentlemen, we have not passed yet upon the recommendation of section No. 1 for the establishment of juvenile courts. The Chair will entertain a motion with respect to that section.

It was duly moved and seconded that section 1 of the committee's recommendations be adopted.

Mr. Hoyt: Mr. President, I think we ought to go a little slowly about this; it may be all right and a good thing, but I think it should have more careful consideration.

In the beginning, I will say that I think there is some remedy necessary, but I am not prepared to say myself, and I doubt whether the Legislature ought to be advised, that we are prepared to say absolutely that the remedy lies in the creation of a separate court. I think that we should proceed a little slowly. It is an important proposition, and it is a change, perhaps, necessitating a change even of the Constitution. I am not sure as to that, but I do not think that we should jump at it hurriedly. Of course this committee may have given the most careful consideration to the subject and they may be satisfied, but I have not given it such careful consideration and I assume a majority of the members of this association have not, and I think it would be better if this subject should be referred to a committee, for the purpose, not only of approving the general proposition, but of pointing out some practical method for the better treatment of this class of offenders, but I will say that I am not in favor, for one, of adopting it broadly.

Mr. Bronson: Mr. President, I want to put in just a word along the same line myself. It is all very well for us to theoretically ascribe certain virtues to a certain system, but to subscribe our acceptance in detail to a system that is not detailed here at all is a different thing. I am not in favor myself of associating children, or either very young men or

women, with hardened criminals; neither am I in favor of establishing a system of espionage, and it may, for all we know, in the absence of some definitely laid out and maturely considered provisions of some proposed law—unless some statute is laid before us, so we may see what it is—provide for the punishment of every child that does some little childish misdemeanor, every boy who mischievously throws a rock through a window or does any one act named in the line of vandalism, the doing of which does not necessarily show that the child is of a depraved and vicious nature, but comes more from the exuberant animal spirit which all healthy children more or less possess. I have seven children myself, and I consider I am entitled to express some idea of what children can do along those lines. I have seen children do a good many things where I thought a good dose of wholesome birch switch could be administered with justice and benefit, but I would not like to see a boy eight or nine years old who throws a rock through a window taken by a police officer, hauled up to an alarm box and run in as if he was a hardened and vicious criminal, and held up to scorn and contempt, not only for himself, but for his family, or who does any other action of that kind, as they all do along the last day of November.

Now, if this is put in definite form so we know what the act is, then we can vote upon this matter intelligently. I am willing to subscribe to the segregation of youthful from hardened criminals, but I am not willing to subscribe my approval of the establishment of a court until we know what that court is going to be obliged or empowered to do along more definite lines than we see now.

The President: Gentlemen, the motion is upon the adoption of the recommendation of section No. 1 of the report of this committee for the establishment of juvenile courts. Is there any further discussion?

Mr. Shippen: Mr. President, I was going to draw an amendment which would be, in effect, that this association recommends to the Legislature the consideration of the subject of juveniles charged with crime, with a view to the establishment of courts to act in such cases.

In agitating this matter, gentlemen, at the outset I disclaim any conclusion in my mind as to the constitutionality of establishing a new court or referring this matter to the courts as they are now constituted. I say I disclaim any conclusion in my own mind as to the power of the Legislature, under the Constitution, to make a new court in the nature of a juvenile court or taking the courts as they now exist. For instance, on the bench of King County we have five judges. Those judges, if empowered by the Legislature, might assign to one of their number the duty of presiding over this class of cases, but as I say, I disclaim having reached any definite conclusion in my own mind as to how that would be done.

Mr. Hoyt: Judge Shippen, if you would add to that that a special committee be appointed by the Chair, or some special committee, or standing committee be designated to bring this to the attention of the Legislature, to inform them of the desirability of some such matter——

Mr. Shippen: That is what I would add, and I will just put this in form and read it:

“Resolved, That this association recommends to the consideration of the next Legislature the subject of the punishment of juveniles who are charged with crime, and that this subject be referred to a special committee to consider it more fully and bring it before the Legislature.”

Mr. Gay: A committee of three or five, Judge?

Mr. Shippen: A committee of five. That embodies, in substance, what my idea would be.

Mr. Shippen's motion duly seconded, put by the Chair and declared carried.

The President: We now recur to the second recommendation of the committee, the separate election of judges.

Mr. Gay: I move an amendment to that, Mr. President, by adding, after the word "judges" that the salaries of Supreme Court judges be fixed at five thousand dollars per annum and Superior Court judges at four thousand dollars per annum.

Mr. Jacobs: I raise a point of order on the amendment. I do not think it is germane at all.

The President: I think so. I will take the vote on the question on the separate election of judges, for the adoption of that paragraph of the report of the committee.

Question put and declared carried.

Mr. Hughes: Mr. President, after reflecting over the matter in the course of this discussion it has occurred to me that it would be better to have separate committees appointed if the association desires to have bills, other than the one relating to the separate election of judges, presented to the Legislature. Therefore I prefer to confine my motion to that subject, instead of proposing a committee of five, to a committee of three, letting other committees be appointed as necessary.

I move you, therefore, Mr. President, that a committee of three be appointed by the President to draft and submit to the next Legislature the necessary bills to provide for the nomination and election of Superior and Supreme Court judges.

Mr. Hughes' motion put by the Chair and declared carried.

The President: Now it will be in order to dispose of the balance of the report in some practical manner.

The Secretary: Now, Mr. President, a proposition has been carried to have a committee appointed to look after the

recommendation, and now a proposition has been adopted to have a committee to look after this other recommendation. It seems to me we are going to get two other committees here and I would suggest why not have the committee that has this in hand take charge of these matters?

Mr. Hughes: Because you want the committees having these separate propositions in charge to make a success of them. If you put all these separate propositions in the hands of one committee, they will not be able to devote the attention to the matters that separate committees would.

The President: Did you make any motion, Mr. Secretary?

The Secretary: I will make that as a motion.

The President: What is your motion?

The Secretary: That the Committee on Judicial Administration and Remedial Procedure for the coming year have charge of the rest of the report to bring before the Legislature or court, as the case may be, and urge their adoption.

The President: The motion is, gentlemen, that the regular committee for the coming year on this branch of our business, the Committee on Judicial Administration and Remedial Procedure, have charge of carrying into effect these recommendations that have been adopted that have not been referred to any other or special committee, and submit them to the Legislature or the court, as the case may be, and urge their adoption. Is there a second to the motion?

Motion duly seconded, put by the Chair and declared carried.

The President: Now we will hear the report of the Committee on Legal Education and Admission to the Bar, Mr. Joseph Shippen, chairman.

Report of Committee on Legal Education and Admission to the Bar read by the chairman, Mr. Shippen, as follows:

To the Washington State Bar Association:

Your Committee on Legal Education and Admission to the Bar submits the following report:

As to admission to the bar, your committee has carefully considered the existing statutory provisions and rules on the subject, and on the whole they are deemed satisfactory and not demanding any present change. Between the extreme theory that every person without restriction should be allowed to present his case to the judicial even as to the other departments of government, in propria persona, or by any agent he may appoint, and the other extreme theory that the legal profession ought to be a closely guarded and privileged guild, whose members alone should be permitted to approach the courts or to practice the profession, your committee believes there is a proper middle course that is quite consistent with the best public interests and the administration of justice, and that is generally received in this country with favor.

Our statutes passed in 1895 confer the control of admission to the bar upon our Supreme Court and invest it with power to cause due examination of applicants to be made by an appointed and compensated committee. After the payment of a fee of \$20, admission is granted to an applicant holding a proper certificate from courts of last resort of other States and Territories of the United States, or to an applicant presenting a proper certificate of two years previous study who shall pass an examination upon his legal attainments and proficiency.

Under the rules published in Volume 25 of the Washington Reports, at the beginning of each of the three sessions of the Supreme Court, applicants possessing the statutory requirements are subjected to a written and oral examination lasting several days, and that court acts on its committee's report in determining whether or not the applicant shall be admitted. The member of this committee now reporting, who is the clerk of that court, and who has assisted the Supreme Court in such examinations of between 200 and 300 applicants during the last seven years, advocates that the preparation in a law office only be extended over a three years' course of study, and that examinations be extended to cover English grammar, spelling, and the rules of punctuation, to a sufficient extent to enable the committee to determine that the applicant is able to write sentences generally and to make them say just what he intended them to say.

We might antecedently expect that the highest court of the commonwealth would wish to maintain a high standard of intelligence and of

legal attainment and of moral excellence among all admitted to become trusted officers of the courts as attorneys. This expectation, we believe, by the experience of recent years, has been duly met, and we are unaware of any complaints by the profession or by the public as to the methods adopted or the results attained under the existing statutes and rules and the methods used in carrying them out.

Based upon a training in a well organized and conducted law school, the law student needs familiarity with the methods of practice that is attainable only in an office of some active practitioner. Thus he is brought into a practical knowledge of law, the theories and principles of jurisprudence as applied to the affairs of men, and justice is administered.

The University of Washington has a law department maintained partly at public expense and partly by the fees paid for tuition by students. Your committee of its own motion paid a visit to that school last fall and was courteously received, and held consultation with its officers as to its needs and requirements for growth and efficiency. For the illustration of its work, an interesting moot court was held wherein four students discussed a case upon which the bench, consisting of your committeemen and two professors were divided three to two in rendering decision, a conclusion not without precedent in even higher judicial tribunals.

In conclusion, your committee begs leave to emphasize the fact that admission to the bar after preparatory studies and examination, is but an initial step in the attainment of legal education. To every intelligent mind the acquisition and application of legal principles and knowledge of the law must be a continuous process.

Books are the great repositories of the experience and wisdom of the ages upon which law is built. But the expense of keeping up with the latest books is beyond the resources of most practitioners.

If it be conceded that public law libraries would be of public benefit, the methods of their attainment may well be considered. In some States a portion of the criminal fines is devoted thereto. In California a statute provides that one dollar of the filing fee in each case brought shall be devoted to a public library of that county.

Finally, our recommendations are:

1. That a high standard of legal attainment and integrity should be required of those admitted to the practice of the law, and therefore we confidently rely on our Supreme Court.

2. That the profession should know more fully of the standards and methods of the law department of our State University and should aid in

promoting it to a higher degree of usefulness and efficiency.

3. That we suggest for consideration the subject of public law libraries and the best methods of their acquisition and maintenance.

Respectfully submitted,

JOSEPH SHIPPEN,

C. S. REINHART,

WINFIELD R. SMITH.

Seattle, July 7, 1904.

The President: What is your pleasure, gentlemen, with this report?

Mr. Hughes: Mr. President, I move you the address of the committee be received and placed on file.

Motion carried.

The President: We will now receive the report of the Committee on Commercial Law, Mr. E. C. Million, of Skagit County, chairman.

The Secretary: The report of that committee has gotten lost, Mr. President. It went to Mr. Roberts last, but the report contains only one recommendation, or rather not a recommendation, but merely calls the attention of the bar to the question of protest. It is fully stated in the program.

On motion, an adjournment was taken to 1:30 o'clock P. M., the same day.

AFTERNOON SESSION.

Seattle, Washington, 1:30 P. M., Friday, July 8, 1904.

The meeting was called to order by the President at 1:45 o'clock P. M., the President, the Secretary and a quorum of members being present.

The President: Before listening to the paper by Mr. McDonald, the report of the Committee on Uniformity of State Laws will be heard. The Secretary will read.

The Secretary reads the report of the Committee on Uniformity of State Laws, as follows:

To the Honorable President and Members of the Star Bar Association:

Gentlemen: Your Committee on Uniformity of State Laws herewith submits the following report:

The undersigned members of the committee agree that uniformity of State laws, with respect to divorce and to the conveyance of real estate and personal property, is desirable. The work already accomplished toward obtaining a uniform negotiable instrument law, we believe, may open the way for further uniformity, including the subjects above mentioned and others. We understand that a committee of the National Bar Association has this subject under consideration, and it will no doubt receive thorough examination by that committee. We, of course, can not say that a general agreement could ever be accomplished, but we are impressed that an ideal plan would be for Congress to provide a general code commission, to prepare and submit to the Legislatures of the various States a universal code governing all points upon which the States can easily agree, and that such code should be made the law of the Federal Courts within their jurisdictions, and also in all State Courts and jurisdictions. We have no recommendations to make other than to suggest that this association consider the advisability or propriety of appointing a committee to confer or communicate with that of the National Bar Association upon the general subject. While it may be that recommendations from the Washington Bar Association may not receive as great consideration as those coming from the older commonwealths, yet an expression of our interest in a matter already engaging the attention of the National Association will, no doubt, receive courteous consideration, and may, in some degree, aid in reaching results.

Respectfully submitted,
HIRAM E. HADLEY,
RICHARD S. JONES,
M. J. GORDON,
WILL E. GRAVES,

The President: Gentlemen, what will you do with respect to this report?

Mr. Milo A. Root: Mr. President, I move that it be adopted.

The President: Now, gentlemen, we shall have to elect to-

morrow three delegates to the American Bar Association which convenes in St. Louis on the 25th day of September, for three days, and then following that is the meeting of the Universal Congress of Lawyers, to which we are entitled and invited to send five delegates. It seems to me that it might be well to have a committee at this time, a nominating committee, to suggest names tomorrow, as one of the elements, probably, determining the selection of these gentlemen, will be their ability to attend those meetings and be away from here at that time, so that perhaps a committee by casting about can find out from the gentlemen whom they might have in mind whether or not they will be able to attend, and in that way have, perhaps, some useless appointments. If that seems to be the view of the meeting, I will entertain a motion along those lines, but I would like to hear some expression from the members present in regard to that point.

Mr. Whitson: Mr. President, I move that the Chair appoint a committee of five, to report tomorrow morning, for the purpose of nominating those gentlemen.

Motion carried.

The President: I will announce later the committee. The next matter in the order of business here is a paper upon the relief needed for our State and Federal courts, by Mr. E. C. McDonald, of Spokane.

Mr. McDonald:—Mr. President and Members of the Association: I am not a little embarrassed by the fact that some of the matters to which I shall invite your attention have already been discussed in the address of the President, in the reports of committees and also in discussions upon the floor. But it is too late now, of course, for me to revise my paper, and therefore I shall ask you to patiently bear with me.

Paper read of Mr. McDonald. (See appendix.)

The President: Gentlemen, we fortunately have with us

Judge Hanford. I am going to ask him if he will have any objection to giving us his views upon this matter.

Judge Hanford—Mr. President and Gentlemen: We had a pretty good time here yesterday afternoon; the debate became warm and interesting, but I presume that the capacity of this association for debate has not been exhausted. The suggestion made at the close of the paper just read, referring especially to the Federal Judiciary in this State, is one which has advocates among those that are here and presumably there are gentlemen here who hold opposite views with regard to the wisdom of adopting the Jones bill or the Foster bill. After a debate of this question if a vote is taken I presume there will be a majority one way or the other on that question. And what will be accomplished by a vote taken at this meeting? I have every reason to believe that both the Senate and House of Representatives of the United States are willing to pass a bill creating a new district in this State, and have been willing for several years. The reason why it has not been done is because of the deadlock in the delegation from this State. Our Senators and Congressmen have not been agreed on the question as to how the State could be divided into districts, and this being a matter of local interest, the Senators and Congressmen are disposed to pass no bill which does not have the unanimous approval of the delegation from this State, and we may expect that that attitude will be maintained.

Now this presents the objective point, and that is, to accomplish anything, pressure must be put upon the delegation from this State to secure unanimous action in favor of one bill or the other. If this association in this meeting resolves in favor of the proposition advocated by Mr. McDonald's paper, or in favor of the Jones bill, it will be by a majority vote. May be it will be a large majority and maybe it will be a narrow margin. In this meeting there is only a portion of the

membership of the Washington State Bar Association assembled, and as we heard yesterday, in the address of the President, the membership of this association is only a small part of the practising lawyers of this State. Now, will our Senators and Congressmen feel obliged to accept the verdict of a vote taken at this meeting as binding upon them? I fear not, and yet I do not despair but this association has influence enough to bring about unanimity of action by our delegation and secure results.

I have a practical suggestion to make and I will submit it to the association and will not myself engage in the debate which is likely to ensue as to which sort of division we are to have. I believe that a vote on the subject taken by ballot of all the lawyers admitted to practice in the United States Circuit and District courts of this State, backed up and enforced by a committee of this association, composed of strong men, will bring about an agreement by our delegation so that they will support one bill or the other and get it passed.

It might be suggested that the vote be taken in different ways. It might be taken admitting every man who has ever been admitted to practice law in any of the courts of this State to vote on the question, but the votes then would likely be influenced by the activity of candidates for appointments more than it will be if the vote is confined or restricted to those who have business in the court.

Now, I think that if we take the roll of attorneys of the Federal courts in this State as being the registration of legal voters and call upon all who have been admitted to practice in such courts to vote on this question, that you will get an expression of opinion from those that are interested and feel the responsibility of having something done and getting the best thing done.

Now, that vote may be taken by issuing a circular and sending

out a ballot, like the official ballot we vote on election days, and calling upon those entitled to vote to seal that in an envelope and send it to the clerk of the court and at a given date have the vote canvassed by a committee of this association and tabulated and put in form to be certified to our Senators and Congressmen. I would recommend that that committee be elected from the ex-Presidents of the association, to get men of strength and influence and energy to push this. The clerk of the court has already, in anticipation of having a new pamphlet of rules printed, taken steps to secure a complete and full enrollment of all attorneys admitted to practice in the various divisions of the State, and from that roll the committee could find those who are yet living in the State and send them a ballot and call upon them to return it, at a date to be fixed, to be canvassed by a committee of this association.

Now, there are other schemes proposed in addition to the two bills referred to in Mr. McDonald's paper. Congressman Humphrey introduced a bill proposing a district with different boundaries from either of the others, and there have been advocates of obtaining relief by appointing an additional District judge for the present District, composed of the whole State, and if the matter is set at large to be voted upon according to each member's own original idea of what might be done, I do not think results would be obtained, because it would be like the interviews that were published in the *Post-Intelligencer* at one time, where they solicited an expression of opinion on the subject from different members of the bar in Seattle—there were almost as many different opinions as there were individuals who communicated their views on the subject. If the vote is taken with respect to the preferences of the practising lawyers on the two bills there will be a majority in favor of one or the other, and that ought to be controlling with our Senators and Congressmen; and I put this before you as a

suggestion, that the election be had under those limitations, that members of the bar be called upon to express their preference on those two bills only, not necessarily to adopt the bills in the phraseology in which they are now before the House and Senate, because I think the Jones bill at least ought to be amended in regard to details (I am not discussing the merits of it on the question of boundaries, but in regard to the details of the measure), but the matter can be put forward in a circular in some way that will call for an expression from members of the bar on the question about which our Representatives and the lawyers and the people themselves are now divided.

I thank you, gentlemen, for your attention.

Mr. Hughes: Mr. President, in order to expedite the transaction of the business of the association, I move that a committee, which shall consist of our present President, the President to be elected at this association for the ensuing year, and the last three Presidents of the association, in all a committee of five, be appointed, who shall prepare two bills, one giving the boundaries of the divisions as outlined in the Foster bill, the other giving the boundaries of the divisions of the State as outlined in the Jones bill, cause them to be printed, copies of them, with a blank ballot, sent to each of the practising members of the Federal Court of this State and obtain a vote or ballot from such practising members, requesting that the ballot be forwarded to the clerk of this court and that it be canvassed by the committee, and that the committee have full power to communicate the results of the election and express its views with regard to the merits of the proposed measures to the Judiciary Committees of both Houses of Congress, and also to our Senators and Representatives from this State.

Now, without waiting for any second to this motion, permit me to say, while on the floor, that I have made this motion for

the purpose of carrying into effect the suggestions just made by Judge Hanford. It seems to me that the motion would cover the ground entirely as outlined by his remarks; if not, I would be very glad to assent to any amendment which would more completely cover the views expressed by him.

Some little time ago, in consequence of the introduction in the United States Senate of a bill by Senator Turner, proposing the re-division of the United States into fifteen circuits, instead of nine, a committee was appointed by the King County Bar Association, of which I was a member. That committee prepared a bill, using the Turner bill as a basis, but very widely departing from that bill, and forwarded it to the Judiciary Committee. Nothing came of it. It was believed that it might operate to relieve the congested condition of the court calendar of this State and of this Circuit. In the investigation that was made by the members of that committee in the preparation of that bill, the facts that have been so ably and so clearly presented to this association by Mr. McDonald, in his very excellent paper this afternoon, were thoroughly investigated. It is unnecessary for me to repeat the results of the labor of that committee, because all that we had and what has developed in the course of the business of the court since that time has been very succinctly laid before you in the paper of Mr. Macdonald. All agree that if it is not absolutely essential it is at least of paramount importance, not alone to the Federal judge of this court and the lawyers practising in it, but to the litigants of this State, that some relief should be provided, and that the only practicable relief is in the form of a re-districting of the District of Washington.

Mr. Hughes' motion was put by the Chair and carried unanimously.

The President: We will now take up the paper on the de-

sirability of harmonizing State and Federal statutes on Irrigation, by the Honorable Carroll B. Graves, of Ellensburg.

Paper read by Mr. Graves. (See appendix.)

The President: Gentlemen, there seems to be some misunderstanding with regard to the book for registration here. It is not only for visiting members, but for those of the local bar—all those in attendance. It is to take the place of the roll call which we dispensed with at the beginning of the meeting, so that any man, whether he is from out of the city or resides here, will kindly register, if he has not already done so.

Mr. Jones: Mr. President, there seems to be one or two other misunderstandings with regard to the program for the entertainment of visiting members. The King County Fair Association has invited all visiting members to attend the fair and races tomorrow afternoon. The electric cars leave here at 1 o'clock from the corner of First avenue and King street. Tickets for the electric ride are in the hands of the Secretary. Mr. Shippen, also letters of invitation which admits to the fair grounds and the grandstand.

Another question has been asked me several times, being on the Committee of Entertainment, and that is that some fellows wanted to know whether you have to wear a dress suit at this banquet tonight. Now this is not a dress suit banquet. It is just an everyday scrub lawyer's entertainment, especially the local scrub lawyers, and if anybody wears a dress suit it is understood that the guard at the door will not admit him.

The President: The resolution adopted on convening first this afternoon, that the Chair appoint a committee to nominate delegates to be presented to the convention to be voted on tomorrow, for delegates to the meeting of the American Bar Association, at St. Louis, and for the Universal Congress of Lawyers, to be held there immediately following the other convention, will now be acted upon by the Chair. I will ap-

point on that committee Mr. Whitson, Judge Albertson, Mr. Mires, Mr. Sharpstein and Mr. de Steinguer.

I will ask you, Mr. Bronson, if there is any report upon the matter submitted to your committee yesterday with regard to the publication of the rules of the Circuit and District courts.

Mr. Bronson: Mr. President, I ascertained from Lowman & Hanford that the cost of publishing these rules would run between a hundred and twenty-five and a hundred and fifty dollars for five hundred copies, and they would not agree, and I do not think any house would agree, to undertake the publication of these rules unless there was some assurance of getting at least the cost out of them within the immediate future.

I appreciate the fact that this association has not any funds which are directly available for that purpose; perhaps it is out of the line of propriety for us to undertake the publication business anyway, but there is, I think, a practicable and feasible way for publishing these rules, and as I am informed by Mr. Walthew, there is a constant and steady demand for these rules. Now the date of these Circuit Court rules of this State, I think, is 1891, and the form is a consolidated book of the Circuit and District Court rules, including the Admiralty rules. As I said yesterday, I have one copy and I have come near losing it once or twice, and I should certainly feel very much embarrassed if I did not have it with me in the office once in a while—in fact, we all ought to have these rules; we turn to them repeatedly and frequently and we should have them in our offices so we may look up any point of practice without applying to the clerk for information, which is frequently done at a loss of time to ourselves as well as to the clerk, and especially is this true of members of our profession living at a distance from the court, and we should have enough interest in this matter to provide for the publication of these rules, anyway.

Now I would like to make a motion in connection with what I have said, embodying the suggestion as to how we can procure these rules, and at the same time assure the publisher, whoever it may be, that they will be paid for. I would suggest that the Secretary of this association provide a very simple subscription paper for the members to sign, agreeing to pay for the rules, say at a dollar a volume, when published and ready for distribution, and when they are ready they can be left in the hands of the clerk of the Circuit and District Courts here and at Tacoma for the gentlemen who have subscribed, and also let it be known that they can be gotten from Lowman & Hanford, and I do not think we will have any trouble in getting a hundred and twenty-five or a hundred and fifty dollars. Mr. Walthew said he thought three hundred and fifty copies could be readily sold in Seattle. I think that perhaps that is a little high, but certainly we could easily pay the necessary costs, and it would be a great convenience to the court and the bar and those interested therein. Our Secretary has been very enterprising and efficient in what he has undertaken to do for us, and would probably be willing to do this, and I think that a committee appointed by the Chair could confer in such a way with Judge Hanford as to get the rules up in satisfactory form to the bench and to the bar.

I move that that committee be appointed and that that subscription list be provided and we can test the sentiments of this convention on the subject. If it is at all unanimous it will be successful.

Mr. L. T. Turner: I seconded the motion, Mr. President.

Mr. Bronson's motion was put by the Chair and declared carried.

The President: I will call for the report of the Committee on Grievances, Mr. C. H. Neal, of Davenport, chairman. Mr. Secretary, do you know whether there is such a report forthcoming?

The Secretary: No report, Mr. President. I had a letter from the chairman in which he said that nothing had been presented to them for consideration; therefore he had no report to make.

The President: The report of the Special Committee on the Torrens System. The chairman of that committee is Mr. T. O. Abbott. Is there a report from that committee, Mr. Secretary?

The Secretary: Mr. President, a report was made by the committee and a copy of the report was sent to every member of the association. It was printed in full and has been lying here on the table. If you desire the report read, I will read it.

The President: Will you read the report, Mr. Secretary?

Secretary reads the report of Special Committee on the Torrens System, as follows:

Seattle, Washington, June 7, 1904.

Honorable William A. Peters, President State Bar Association:

The undersigned, a special committee appointed at the 1902 session of this association for the purpose of drafting a bill for the registration of land titles in the State of Washington, according to the system known as the "Torrens System," beg to report as follows:

Pursuant to the authority thus conferred, the committee prepared a bill for the practical adaptation of this system to the needs of the people and the laws of the State. This bill was introduced at the last regular session of the Legislature, but it did not succeed in progressing further than the House Committee on Judiciary. A brief hearing was accorded to members of this committee and other interested parties, but it was the view of the members of the Judiciary Committee that the bill would require too much time for consideration and that there was no popular sentiment in this State which demanded its adoption; hence no report was made and the bill died without any action by the Legislature.

At the last session of this association, this committee was continued for the purpose of bringing the provisions of the bill more directly to the attention of the members, so that it might be considered by them in all its phases and some definite action taken by the association with a view to creating a sentiment throughout the State which would tend to bring

about the adoption of this reform. We therefore submit herewith a copy of the bill, as prepared and approved by the committee, in the hope that the various members of the association will give its provisions careful study and suggest such amendments as may appear advisable for the purpose of perfecting it.

We do not deem it necessary to enter into any argument, historical or otherwise, for the purpose of convincing the members of this association of the need of this reform, since that phase of the question has already been determined by this association by the appointment of this committee. A brief review, however, of the various decisions relating to the questions which will naturally present themselves to the members will not be out of place:

The States of California, Illinois, Massachusetts, Minnesota and Oregon have already adopted this system. The State of Ohio passed an act which was declared unconstitutional. (See *State vs. Guilbert*, 56 Ohio State, 575.) No further attempt has been made in that State to secure the adoption of the system.

The California act, which was enacted in 1897, has not, as yet, been adjudicated by the courts of that State, nor has it been very generally put into effect, for the reason that the furnishing of abstracts is limited to certain corporations and these corporations are required to pay all damages and costs which the State may sustain by reason of any inaccuracy which may appear in any abstract so furnished; and also because no assurance fund is provided, and perhaps other reasons.

In Illinois, a former act was declared unconstitutional (see *People vs. Chase*, 165 Ill., 527) mainly upon the ground that it conferred judicial power upon the Registrar. Subsequently, in 1897, a new act was passed, which has been held to be constitutional (see *People vs. Simon*, 176 Ill. 165), and it has been very generally adopted and become exceedingly popular.

The Massachusetts act differs from the other acts, in that a special court has been created, having exclusive jurisdiction of all proceedings in initial registration, with right of appeal, as other courts of the State. This act has received the consideration of the highest court of that State, and its constitutionality was upheld in an able opinion written by Chief Justice Holmes, who has since been appointed an Associate Justice of the Supreme Court of the United States. The decision was considered by the latter court, and sustained, though not upon its merits. (See *Tyler vs. Judges*, 179 U. S. 405.) Hon. Leonard A. Jones, the eminent author of legal

treatises, is the Chief Justice of the court, and he commends the workings of the act in the highest terms.

The Minnesota act is confined, in its operation, to the larger cities. Its constitutionality has been upheld by the highest court of that State. (See *Douglas vs. Westfall*, 89 N. W. 175.)

The Oregon act has not as yet been considered by the courts of that State.

The committee, after careful consideration of the various acts, and of the necessities and conditions of the people of this State, have adopted the provisions of the Massachusetts act concerning a special court. It has also adopted many of the provisions from the various other acts. In one particular, however, it has thought best to conform, as nearly as may be, to the laws of the State as already enacted, namely, the method of notice.

Respectfully submitted,

T. O. ABBOTT,

J. B. HOWE,

GEORGE E. WRIGHT,

Special Committee.

Mr. Hartman: I move, Mr. President, it be the first order of business tomorrow morning.

The President: Gentlemen, you have heard the motion, that consideration of this report upon the Torrens system be postponed until tomorrow.

Mr. Hartman: Mr. President, I suggested it as the first order of business. I think this is one of the most important matters to come before this meeting, and while I would not like to interfere with the rest of the program, yet I feel that we ought to get this out of the way, even if other matters have to go.

Mr. Hartman's motion put by the Chair and declared carried.

The President: I will ask if the committee appointed to consider the feasibility of changing the time for the meeting of the association has made a report?

The Secretary: It has, Mr. President.

Report of the committee referred to read by the Secretary as follows:

To the Washington State Bar Association:

Gentlemen: We, your committee appointed to consider the question as to the time of holding the annual sessions of the association, beg leave to report that, after a careful consideration of the matter, we recommend that all sessions of the association hereafter be held as early after the Fourth of July as practicable, and not later than the 15th of July.

We further recommend, as an aid to securing a better attendance upon the Bar Association, that the Secretary address to each judge throughout the State, at least thirty days before the meeting of the association, a communication asking that all courts be adjourned during the convention.

Your committee further begs leave to recommend that all of the officers of the association, and particularly the Vice-Presidents, be instructed each year to use their best efforts to obtain a large attendance from their local bar, and that the Vice-Presidents have power to appoint a local committee, each in his respective county, to assist them in procuring such attendance.

CORWIN S. SHANK,
R. G. HUDSON,
JOHN L. SHARPSTEIN.
ALFRED BATTLE,
CHARLES E. SHEPARD.

Adopted and referred to Executive Committee.

The President: Gentlemen, I would say that any action upon that report would probably be confined to expressing the sentiment of the association here, as it is not necessary to alter our By-Laws or Constitution. The provision now is that the time for these meetings is fixed by the Executive Committee. So, I say, this will be more as a suggestion of the sentiment of the association at large for the guidance of the future committee. What do you wish to do with this report?

Mr. Hudson: Mr. President, I move that it be adopted and referred to the Executive Committee for their action.

Motion carried.

The President: There is no further business this afternoon; we will therefore adjourn until 10 o'clock in the morning.

THIRD DAY

MORNING SESSION.

Seattle, Washington, 10 A. M., Saturday, July 9, 1904.

The meeting was called to order at this hour by the President, the President, Secretary and a quorum of members being present.

The President: The report of the Committee on the Torrens System, under the action taken yesterday, is the first order of business this morning. The report has already been read and is now open to discussion. I would like Mr. Abbott, who is the chairman of that committee, to make such suggestions along the line of the report as he may see fit to make.

Mr. T. O. Abbott—Mr. President and Gentlemen: I only arrived home last night from a long journey East, and I was not aware until I reached here that anything would be expected from me with reference to this report. The report itself was gotten out for the purpose of bringing out suggestions from the various members of the bar with reference to the provisions of this proposed act, so that if there was anything which was likely to be held bad by the courts it could be corrected now, or if there was anything which was impracticable in the operation of the bill suggestions could be made which would bring about a practical bill.

The act itself has been founded, or rather the bill has been founded, upon all of the other acts in the Union, but particularly upon the Massachusetts act, principally for the reason that Henry A. Jones, who presides over the Massachusetts court,

has commended that act as being by all odds the best in the United States, and I look upon him as being one of our greatest judges and also one of the persons best qualified to state with reference to the operations of this act in the United States.

Now, I do not wish to take up the time of the association in discussing the merits of this bill. I have no doubt you have read it, and I have no doubt that some of you have suggestions and criticisms to make, and if there is anything which I can do to enlighten you upon such questions as you have to propound, I shall be very glad to do it.

The President: Gentlemen, the matter is open for discussion.

Mr. Wright: Mr. President, there is one question I should like to ask of Mr. Abbott, and that is, what is the reason for preferring to establish a new court of land registration, the constitutionality of which I have heard questioned here, rather than to follow the Illinois system of using the existing courts for the registration of titles? I ask that question because I have had no opportunity of conferring personally with Mr. Abbott, although my name appears upon the committee.

Mr. Abbott: The reason we had in mind in adopting that court was because we believed it would be more expeditiously and perhaps more efficiently transact the business coming before it than could be done under the Illinois system. It was found that that was one of the cumbersome parts of the Illinois system. A great deal of time was lost, a great deal of work was done by the inferior officers, and it was thought best to have a court that was established and permanent so there might be a body of men that would be experts in passing on land titles.

Now as to the legality of that court. In passing upon that section of it that was one question which was very much considered by us, and I had very grave doubts at first as to the constitutionality of the provision, but afterwards, after ex-

question more fully, I came to the conclusion that it was not wise, and I believe that was also the view taken by the committee to whom I submitted that question. At the same time there may be some question yet upon that point. I should like very much if there is some gentleman who doubts the constitutionality of it, to have him say so on the subject. The view of the committee was that the action of the inferior courts that was authorized by the bill, and inasmuch as the other courts, the District and Supreme Courts, would have supervisory action over the action of this court, it seemed to them that was a constitutional question.

Mr. President, I move that the report be referred to the Judiciary Committee of the next Legislature by our Secretary without discussion.

It is my duty to look into it and I do not believe that the members of the committee present are in a position to enter into a thorough discussion of the bill. As I understood it yesterday, some of the members, most of them, said they had not carefully read it or thoroughly examined it, and it is a step—I don't much like the turning reformers, anyhow too hastily, and I think that if we just send it over to the Legislature, it is their duty to go into these things and settle the question of constitutionality.

I move that motion, Mr. President.

Mr. President: Would it not possibly be a matter of doubt as to policy, Mr. Gay, if there is any question about the constitutionality of it, for the State Bar Association to endorse it even so far as to suggest it to the State Judiciary Committees—would it not possibly weaken us in other matters?

Mr. Gay: I do not believe, to be frank about it, the com-

mittee should have reported the bill without first settling that question.

Mr. Marshal P. Stanford: How are they going to settle it?

Mr. Gay: If there is a doubt about it, I would not want to recommend it—if there is a doubt about its constitutionality, and in that particular I do not think we are going to wait here today to study the question.

The President: Are there any other remarks?

Mr. Abbott: I do not understand the motion has been seconded, Mr. President, but I do not wish the members to misunderstand me with reference to the position of the committee.

Now, I have not intended to assume as much authority in this committee as has been given to me by the other members, as it has seemed that the others were not able to give the matter the attention that it required, but so far as the committee stands at present, at least those members of the committee who have considered this feature of the bill, I do not understand that they feel that the question of the constitutionality of the court is such an open question that we could not recommend it; on the other hand we believe it is a constitutional provision, and we believe when the Supreme Court passes upon it, it will so hold, but that was the one feature of the bill which was a disturbing question to us for some time. The other questions I think have all been settled by the various courts of the country that have passed upon similar acts. I do not think there is any other feature of this bill which is open to the question of its constitutionality, but I hope that the association will not refer this to the Legislature without some kind of recommendation, because that has been the trouble heretofore in preventing this measure from receiving consideration. This is not the first one which has gone before the Legislature of this State, but the various judiciary committees have at all times claimed that there was no sentiment in the State which required or

even suggested the desirability of having this bill adopted or this reform adopted, and I believe that inasmuch as this association has already taken a stand with reference to the propriety of adopting this reform it ought now to take some stand with reference to the kind of bill that should be submitted to the Legislature, and either to say that this bill is not a proper one, or to say that it is so that the committees of the Legislature may have some assistance in arriving at a determination.

Mr. R. S. Holt: Mr. President, I am opposed to giving to this bill any measure of approval of the Bar Association of this State in any form whatever. I do not know anything about the previous action of the Bar Association in this State of determining the question as to the feasibility or the necessity for a reform of this character, but I take it that even that question is open for consideration by the Bar Association at the present time.

I am opposed on principle to any recommendation or any approval of the Washington bill or any bill of that character or description; of the Massachusetts, or the Illinois or the Ohio, or the Michigan bill.

Some years ago I was called upon to make a report on the Torrens bill—some ten or twelve years ago—to the Chamber of Commerce of Tacoma, and in investigation of the subject I arrived at certain conclusions and perhaps I imbibed certain prejudices which would apply to all the bills dealing with this subject which I have read. Those conclusions and that investigation made me opposed to any bill of this character on principle. The Torrens Land Registration act may be defined in few words to be an act which vests in certain individuals the power to execute an instrument of conveyance without notice to anyone, by which that act will have all the force, validity and effect of the judgment of a court of competent juris-

diction dealing with the rights of all parties in interest who have been regularly served with notice.

The decisions of the Supreme Court of Massachusetts upholding a bill of this character, the decisions of the Supreme Court of Illinois upholding a bill of somewhat similar character, when examined, will be shown to exhibit a disregard for the constitutional guarantee that is violated, almost evidently and palpably, by this effort to bestow on a register, who is the auditor of the county, the power to determine, without notice to anyone, who is the owner of land and issue a certificate to him which shall be as binding and conclusive as the decree of a court of competent jurisdiction. And it is upon the ground that any bill of this character which is effective, which serves any good purpose whatever, must violate the spirit of that provision of the Constitution which says no man shall be deprived of life, liberty or property, except by due process of law, that I am opposed to this system.

The Illinois bill which received the approval of that court gives to the parties interested a period of two years in which to appeal from the decision of the court or to attack it. Our law thirty days. The law in general under the registration act by the decree of the court of jurisdiction of that subject to some one of the recognized courts of the State, and not to some inferior court. The Ohio act did so likewise, but the judges of that court, with a high regard for what they conceived to be the spirit of the Constitution, would not hear of the proposition in any form that a man's property might be taken from him on the judgment of some individual, in whom was vested judicial powers, without notice or an opportunity to be heard, and they declared that the spirit of the thing was opposed to the Constitution of this country and was un-American and they turned it down.

But after the land has come under the registration act and

the decree of the Court of Registration has established the title, it is dealt with from that time on by the register, who is the clerk of the court, or by the auditor of the county, who is called the Auditor-Recorder, and upon the production of a certificate he issues a certificate which is unimpeachable, absolute and conclusive. Upon the presentation to him of a mortgage, of an instrument creating a trust, of a document containing complicated powers, he determines the proper construction of the provisions of that instrument, issues his certificate accordingly, it is binding on the entire world, and if he takes away from one man his property and gives it to another the injured party, if without negligence—if without negligence he has lost his property—may resort to a fund from which he can secure compensation after long litigation and the somewhat tedious process of exhausting his remedy against one party before resorting to the insurance fund; and it is that which is said not to be an infringement on the constitutional guarantee which it is our duty as lawyers to hold sacred.

It is said in the report of the committee that Justice Holmes, while on the Supreme Court bench of Massachusetts declared the Massachusetts law to be constitutional. He did, in a way, But at the concluding part of his opinion, after exerting all the ingenuity of a fertile intellect to discover some ground upon which he could base the constitutionality of the act with reference to notice, he finally says the Legislature ought to amend the law—we hold it is constitutional, but the law with respect to notice should be amended, and if the Legislature does not see fit to do so, the courts should see to it, that notice, ample, full and sufficient, is given, and that is the way he held the act to be constitutional. In Ohio it was promptly turned down. In Illinois, when a bill similar to this one was presented, it was turned down. The constitutionality of the law was sustained in Massachusetts largely upon the ground that the register by

the act itself is declared to act under the instructions of the court, and said the court, in passing upon the act, he is more like a referee, he is required to act under the instructions of the court and therefore his powers are ministerial and not judicial. There is not in this bill one suggestion that the auditor of the county, in passing on titles, shall appeal to the court for aid or suggestion, and it is upon that ground that the constitutionality of one of the other acts was sustained. They say that when a man brings voluntarily his land under the operation of this act, that his act in so doing shall constitute an agreement which shall be a covenant running with the land forever, binding all subsequent owners, that that land shall be subject to the Torrens system and that its title may be disposed of, effected and determined by reference to that bill and such subsequent acts as may be enacted in modification of it. In other words, they say this is a covenant by which the present owner of the land waives the benefit of the constitutional guarantees with reference to that land today and waives it as against all future owners, so that so long as land exists the owner of that land, by reason of having become its owner, in reference to its title, is not entitled to the benefits of the constitutional guarantees on the subject.

I have heard that there is one portion of this country where the Constitution does not follow the flag, but it seems to me that it is a very ridiculous proposition to say I may bring any given piece of property within the provisions of the Torrens system and say that for all future time that land may be handled and disposed of by the non-judicial officers of the country without regard to the Constitution, because I have made a covenant which runs with the land forever.

There is another peculiar thing about this law which shows it is alien to our ideas. In Massachusetts I suppose tax titles are not considered any good, the public shy from tax titles; in

Washington it is the owner who shies at a tax title; but this bill declares that although the register has power to pass on all questions, to determine all titles, he shall not determine a tax title, and he shall not issue a certificate in any case where the title rests upon a tax title, unless that tax title has been affirmed by a court of competent jurisdiction; then, upon the production of the decree the validity, force and effect of which he has ample power, under the bill, to determine—a very simple thing, of course—he issues his certificate, and that certificate becomes absolute and final. Thus we see that there is some doubt in the minds of the framers of this bill as to whether the court of land registration is infallible, because while he may deal with the construction of trust conveyances, the construction of wills and simple things of that kind, he must not touch tax titles.

Mr. Gay: My explanation of my motion is this—well, one member of the committee says it better be referred to a committee.

Mr. Wright: Not necessarily this committee, but some other committee.

The President: That is, your idea is to re-refer it to this committee to report back to the next meeting?

Mr. Wright: My position in this matter, Mr. President, is one of a good deal of sympathy with what Mr. Gay has had to say, but on the other hand I am a firm believer in some Torrens system. I have not had an opportunity to examine this act, because I had no notice of my appointment on this committee except what I saw in the *Post-Intelligencer*, which I received in Boston about a month ago, but while in Boston and Chicago, I took some opportunity to inquire as to the workings of the Massachusetts and Illinois acts, and it is undeniably true in the case of both of those acts, that they have taken hold very slowly upon the public favor. I do not think

there is any doubt that they are going to succeed in the end. but they have been met from the start with the criticism and distrust and suspicion of practically every attorney who passes upon real estate titles, and it is only since those acts have been passed upon by the highest courts that attorneys are beginning to register their titles. In Massachusetts the Four Rivers shipbuilding plant has just registered its title and placed two million dollars of mortgage bonds, and that is the highest title thus far registered in the State of Massachusetts.

Now the whole proposition, it seems to me, is the getting of an act which will commend itself to the public approval and approval of attorneys as undoubtedly constitutional, and from the limited examination I have been able to give to this act since my return, I think there is very grave doubt whether the court provided for in this act is a constitutional court, and I think the mere existence of that doubt will be sufficient to kill this act if it is adopted by the Legislature as it stands now.

I do not agree with the gentleman that the Torrens system takes property without process of law. That same objection would kill the whole system of corporate issue of stock certificates as we have it today. If I have a certificate of stock and I want to sell it, I make an assignment upon the back of it, I hand it over, the purchaser takes it around to the secretary of the corporation, the secretary of the corporation issues a new certificate to the purchaser. He takes my property and transfers it to another, exercises that function which has been termed judicial, and his act is just as much open to criticism that it is taking property without due process of law as the act of a register under the Torrens system to whom I take my certificate of title with a transfer and of whom I make the request that he issue a new certificate in favor of the purchaser.

So far as the argument against the constitutionality of the system is based upon technical grounds, I think we can rely

upon the decisions of the Supreme Courts of Massachusetts and Illinois upon acts substantially the same as this, as I understand them, sustaining their constitutionality so far as technical points of law go, and the argument of the gentleman (Mr. Holt) against the act has not in fact gone beyond technical grounds.

If you regard the practical workings of the act you find it is a success in every jurisdiction which has tried it for a sufficiently long time to get it working at all. We do not hear from Australia that it takes property without due process of law or that its work has not been beneficent. In England it was adopted in 1897, and made compulsory. In Germany they have recently adopted in several parts of the empire at least a similar system. It has been in force in Canada a great many years. Similar laws are in force in many of the countries or states on the continent of Europe. Now, Mr. President, the point I want to make is, that being a member of this committee, I do not care that it be referred to this committee, but I do think it is to the advantage of the State of Washington to have a Torrens act, and I think it is absolutely necessary that further time be given for the preparation of that act, and I therefore move, Mr. President, that the preparation of a Torrens act be referred to a committee of three to be appointed by the President, with power to present it to the Legislature of the State of Washington.

Mr. Wright's motion duly seconded.

The President: It is moved, gentlemen, that the report of the committee be placed on file, that it be re-referred to a committee to be appointed by the President, composed of three members, to report at the next meeting a bill.

Mr. Benson: Mr. President, I do not believe anyone would accuse me of being particularly an advocate of the interests of the landed proprietor; but to me this, you might say, in-

volves a question of ethics. I notice that this motion to put this over to another committee is seconded by the gentleman who has done the efficient work as a committeeman.

The President: I did not understand that it was another committee, Mr. Benson.

Mr. Benson: Or that his work shall be continued. I simply want to suggest this thought. Brother Abbott is probably at least the equal of any man at the Washington bar to do this work, and I have——

The President: I understood the motion to contemplate the appointment of a committee by the Chair, and the Chair certainly has in mind to continue the present committee.

Mr. Benson: That is not the point I desire to make, Mr. President: It was this——

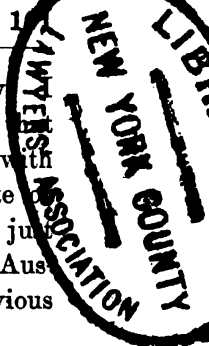
Mr. Wright: May I interrupt you, Judge Benson?

Mr. Benson: Certainly.

Mr. Wright: I certainly did not intend, Mr. President, to be guilty of any discourtesy to the chairman of the committee, and in making my motion I stated the reason I put it in that way, that because I was a member of the committee myself, I did not wish to move to refer it to the same committee.

• Mr. Benson: The point I want to make is, that all the thought that can be given to the subject and all the light that can be got upon the subject has been laid before this body today. I have no doubt at all that my Brother Abbott has practically exhausted this subject, and I believe that every attorney will agree with me that that is true.

Perhaps I am somewhat fortified on the constitutional question by my investigation in regard to a similar tribunal, but for another purpose. I came to the conclusion at that time the same that he has now, that this is a court of special jurisdiction, and while there may be some question as to the constitutionality of such a court, it never will be any less, and we



know that it will exist just the same the next time as now am inclined to call a spade a spade, and it seems to me everybody who is posted upon this question will agree with me that for the interests of the public of the great State of Washington, the Torrens system or something like it, is just as much an improvement in governmental affairs as the Australian ballot was over the old open ballot, and for obvious reasons.

Now, as I said a while ago, I am not personally interested in this matter. I had not intended to take any time upon it excepting for this purpose. Personally, I am in favor of the Torrens system.

Mr. Emmett N. Parker: Mr. President, so far as the question of motive is concerned, were my sentiments governed by that, I would be inclined to favor this bill rather than be against it, because I firmly believe it will furnish more work for the lawyers pertaining to real property law than we have ever yet dreamed of in this State. So let us have it if we are going to think of our own selfish interests.

Now, when we come to the consideration of a reform, I am satisfied that there is no class of men in the world who think as little about how it is going to effect their business as the lawyers do, and I do not believe that that is a thought that is in the mind of one lawyer in twenty that is in this room hardly. So I pass that.

So far as the creation of a special court is concerned, Mr. President, I do not think there is any doubt (I say that because that is the way I view it), but what the Legislature has ample power to create inferior courts. They have done so in this State and nobody ever dreamed it was unconstitutional. If the Constitution does not mean what it says in that regard it does not mean anything. It says the Legislature may create inferior courts. Especially will this be true if you allow ap-

peals to the Superior Court and Supreme Court. And passing that, I pass to the bill for a moment.

I contend that there is no crying need for this measure, there is no great need here of reform, and this bill, upon its face, if it is constitutional, and I will assume that it is for the moment, bears evidence of the fact of a lack of its necessity. Among other things, it is provided in this bill (and what I speak of now is the very gist and essence of all of these bills) that in the action under which this land is to be brought under this registry system, I mean in the action that is brought by this new fangled, untried proceeding, in abandoning old lines, it lands you in a new court, which many of you think is not constitutional, and it provides all the world shall be included, and further on it says even minors and people under disability are included, and in another place we are told this shall be actually and only an action in rem. Now, my brothers, if it is true as between private litigants (I am not speaking of a probate proceeding, nor of a tax proceeding), but if it is true as between private individuals litigating their rights there can be such a thing as a pure proceeding in rem to settle the title to land, which I am not prepared to say there can be, although the Minnesota court said there can be in their recent decision in passing upon this act, but just how it arrived at its conclusions in the decision is beyond me, as Brother Holt has said, but if that is true, you already have a court established by the Constitution, the powers of which are fixed and certain and beyond all question and you have an ordinary civil action under the code which has been tried and found sufficient for any and all purposes under a thousand or more decisions covering a period of fifty years, and you have hundreds of years of experience in the actions which preceded that and upon which that is built. In other words, you have a court and a place to go with a proceeding that is unquestioned to settle once and forever the

very questions that are sought to be settled in this bill. What is this bill for? It is to have a proceeding in rem in a court of record to establish once and for all a new starting point for your title. Now if that is due process of law and all the world can be brought in, then it will be due process of law in a court of ordinary jurisdiction, in an ordinary civil proceeding, providing you will add about a half dozen words to the service part, or the party part of the code of Washington by which you can bring all the world into such an action. So I say this bill upon its face shows that it is a strained effort, by long and complicated proposed proceedings, in a court which you say is questionable, to do what you can do, if this is due process of law, in a court of ordinary jurisdiction by an ordinary proceeding, and then what would you do? You could start a proceeding in rem in your ordinary court, creating a new, or you might say, a paramount title to your property as often as you pleased, and you need never examine your title—need never go beyond that decree. If this is due process of law that is due process of law and that would be the end of it. Then the Minnesota court (I read their opinion recently) refer to probate proceedings as being proceedings in rem, and to tax proceedings as being proceedings in rem, by analogy of reasoning that this will support this proceeding, but they do not say anything about a tax proceeding being in the name of the sovereignty to maintain its very life existence, and they do not say anything about a probate proceeding, which is a proceeding in rem for nothing except to determine who the heirs are.

So it seems to me that I am opposed to this measure, although I would not be opposed to an action of another kind in the other courts if it is constitutional, which I do not wish to express an opinion on now. I am opposed to it just because it is new fangled and an experiment; I am opposed to it just because I am opposed to the manner in which the Legislature

says we shall foreclose a tax delinquency certificate. Let me illustrate: it was not enough for the Legislature to provide that a tax delinquency certificate should be foreclosed in an ordinary civil proceeding, one which is well understood by everybody, but they had to create a new fangled proceeding which it has taken us four or five years of constant litigating to involve into something so we know what it is, and now of course we understand it, but we do not know how the new is any better than the old. It is a question of following along lines which we already well understand and which are already well determined; it is a question, in other words, of evolution, pure and simple—by growth, rather by evolution as against creating something new. So if this act were constitutional and if it is true that a proceeding in rem will do, and if you have a cure for all your troubles by creating a new court, then it can be cured in a court of well known jurisdiction where it is beyond dispute and I can have my title fixed there once and forever, and in a few years if it has passed through some foreclosures or a little litigation and got tangled up again, I can bring another proceeding in rem to cure my title and get it fixed up again.

The President: I am sorry to interrupt you, Mr. Parker, but your time is up.

Mr. Abbott: Mr. President, I wish to say just a word. I do not desire to take up the time of the association, I merely desire to say that I feel that the members of this association have not yet sufficiently considered the provisions of this act, but they have made some suggestions which are worthy of consideration and worthy of careful consideration, and I believe it would be better to have an able committee appointed by the President for the purpose of considering an act further, or this act further, and making it conform to what would be more practicable in the eyes of the members of the association,

as well as perhaps to avoid some of the questions concerning its legality which have been suggested; and for that reason I believe it would be wise to have a committee appointed, with power, however, to prepare a bill and report it to the next session of the Legislature, with the approval of the association, as the act of the association.

Mr. Wright: I accept that amendment to my motion, Mr. President.

Mr. Stiles: I move to amend the motion, Mr. President, that is made here by adding to it the provision that a bill be prepared so that there may be an alternative as to courts, one bill to be presented to us which will permit of our present courts—the Superior Court—and another one of the courts that has been drafted here, so that we may have a choice next year when we come and may determine which course we will pursue in that matter. I think that is the most vital matter in connection with it.

Mr. Abbott: This would have to be reported, as I understand it, before this association meets again.

The President: That is what this amendment contemplates. The first motion was, and then the amendment of Mr. Abbott was that the committee preparing this bill should report it direct to the Judiciary Committees of the Legislature, and your amendment, Judge Stiles, was to that.

Mr. Stiles: Well, if that is the case—I understood the report was to be made back to the Bar Association.

The President: I think that would probably be out of order, that second amendment, as being inconsistent with the other amendment and the motion. Now, as the amendment has been accepted by the mover of the motion, the motion now is that the present report be accepted and the matter be re-referred to a committee of three to be appointed by the Chair, who shall prepare a bill and report it to the Judiciary Committees of the

next Legislature. Are you ready for the question?

Mr. Gay: Mr. President, we have taken so much time on this that it is with reluctance that I arise at all, but I do not believe that the association wants to be bound by the act of a committee on a matter that anyhow is so purely legislative and affects so many interests other than lawyers that it is a grave question whether it ought to be acted on at all by this association, and I would hate to be bound to my clients—to have them think that I was favoring a thing I never saw, because I might afterwards feel myself embarrassed. I don't think the motion as it now is amended ought to be adopted at all.

Mr. Bronson: I take the same position that Mr. Gay does in this matter. A very wise bill may be evolved by the committee, but certainly on principle this association would hardly be justified in taking a position that it would stand back of any bill prepared by any committee, other than a majority of the members of the association, who, of course, have authority in any meeting, if they vote to that effect, in a matter which is to be presented to the Legislature, which is to bear the stamp of approval of the association. I do not see how we can consistently take that position.

Mr. Hoyt: I am heartily in favor of the motion as it is amended. There is no danger we will get legislation at the first session of the Legislature to which the bill is reported. It is absolutely impossible to my mind to expect detailed action at the next legislative session, even if this motion as it is now amended prevails, but we will be making progress, and I, for one, am thoroughly convinced as to the necessity of the bill as a matter of public progress, and as to the necessity of the enactment of some law of this kind.

The question is put by the Chair on Mr. Wright's motion, as amended by Mr. Abbott, and division is called for.

A Voice: Mr. President, will you state the question, please?

The President: The question is the motion made that this report be accepted and the matter be referred to a committee of three appointed by the President to draft such bill as they think proper with regard to this measure and submit it to the next Judiciary Committees of the Legislature.

Mr. Millett: I would like to ask whether that is the Judiciary Committee of the Senate or Lower House?

The President: Both.

Mr. George Ladd Munn: Mr. President, do I understand that this adoption of this report carries with it the approval of the association?

The President: I do not understand that it does.

The motion is put by the Chair, a rising vote taken, and declared carried.

The President: The Chair will appoint as such committee Messrs. Abbott, Wright and Howe.

Mr. Abbott: Mr. President, if you will permit me, I would like very much to be excused from being on the committee. I have found that it is almost impossible for the committee to get together——

The President: You are so thoroughly fitted for the position, Mr. Abbott, that I will not entertain the motion.

Mr. Abbott: Mr. President, I think that very much better results would be secured if some other gentlemen would be appointed on the committee, as chairman, at least, and I will be more than glad to co-operate and give any assistance I can and any co-operation I can.

The President: The Chair does not agree with you, Mr. Abbott. The next matter we will take up will be the discussion of the subject, "Should This State Permit Corporations to Own and Vote Stock in Other Corporations?" The discussion will be by Mr. Alfred Battle in the affirmative and on the negative by Mr. Theodore L. Stiles.

Papers read by Mr. Battle and Mr. Stiles (See appendix.)

Mr. Shippen: Mr. President, owing to the lapse of time and the important matters yet to be considered, I would move with regret the following motion: That the report of the committee on Obituaries be dispensed with, and extracts from the memorial addresses on recently deceased members of this association be incorporated in our annual report when published.

I would like to say, Mr. President, that I was asked to say a few words in memory of the Honorable John J. McGilvra, who was born seventy-eight years ago today. He was with us at Tacoma last year.

(See Appendix.)

Motion duly seconded, but by the Chair and declared carried.

The President: The next order of business is the election of officers. The officers to be elected, are a President, First, Second, Third and Fourth Vice-Presidents. At our last meeting the By-Laws were changed so as to provide for a Fourth Vice-President. The officers who are now filling those positions are Edward Whitson, First Vice-President; Frank H. Brownell, Second Vice-President; and Patrick F. Quinn, of Spokane, Third Vice-President.

Mr. Hughes: How are elections made, by ballot or viva voce, Mr. President?

The President: By ballot.

Mr. Hoyt: Mr. President, I move you that the rules be suspended and each of these officers named be advanced; that is, that the First Vice-President be elected President, the Second Vice-President be elected First Vice-President, and so on, which will dispose of all those and leave only one officer to be elected and that the Secretary be authorized to cast the ballot of the association for those gentlemen for the respective offices.

The President: Now, with regard to the election of a

Fourth Vice-President; Mr. Quinn now becomes the Second Vice-President and Mr. Brownall the first—

Mr. Abbott: If there is no established rule by which we are limited as to the cities where we are to hold our meetings, why not extend the scope of our meetings somewhat? Now we have a city up in the north that has grown rapidly in the last few years; they have a very active Bar Association there, I understand, and have many able and active practitioners at the bar. I refer to the city of Bellingham. We have a gentleman with us this morning who has taken a great deal of interest in this meeting, and if not out of order I would nominate Mr. Black, of Bellingham, for Fourth Vice-President.

Mr. A. L. Black: Mr. President, it seems to me that if this association wants to succeed in the best way and the best manner, it would be a good thing to get interested the members of the bar all over the State. Now, I think that the members of the bar of Whatcom County have never taken very much interest in this Bar Association. Some years ago—prior to eight years ago—I was actively in the practice in Whatcom County; at that time I went to San Francisco. Prior to that time myself and partner and a number of the members of the bar of that county took a very active interest in this association. I know that if this association could meet in Bellingham it would probably revive that interest, and if they could meet in Walla Walla once in a while—if they could meet around in the different parts of the State, there is no doubt but what you would interest the entire bar of the State more than you would in meeting annually in either Seattle or Tacoma or Spokane. That, at least, would be my judgment. While I do not care to be Vice-President of the association, if a meeting could be held in Bellingham, I think you could get that whole section of the country interested that is not interested now, and I think the amendment providing for a Fifth Vice-President, so that

that may be done would be a wise thing. Personally, I expect to be in the active practice again in the course of eighteen months; I have been out of it now for eight years.

Mr. Hudson: I think myself, Mr. President, some other cities ought to come into the circle, and if we can get an invitation from some other place, why, I think we would be willing to take it in. I think some place ought to come in after Everett, some new place, I mean, because Spokane had it only a few years ago and Tacoma last year, and if Mr. Black wants to offer an invitation to go to Bellingham, why, I think we might put his place in after Everett and make the selection accordingly.

Mr. Hughes: Don't you think we should go east of the mountains? That would make three sessions on this side.

Mr. Hudson: If we had an invitation to go east of the mountains we should go there instead of Bellingham and then come back to Bellingham.

Mr. Macdonald: Mr. President, last year there was an invitation extended to visit Spokane; at the request of Mr. Brownell and his friends of Everett, on behalf of the Spokane bar, I consented that the visit of the association to Spokane might be deferred one year. I do not want to put off the meeting in Spokane too long, and I therefore request the association that it do not defer it any longer and that the meeting of the association be held in Spokane the year after next.

Mr. Black: All I desire to say, Mr. President, is, that if a formal invitation is necessary, I very gladly extend that invitation to meet at Bellingham.

And, since Mr. Thompson was so kind to speak of Bellingham in the glowing terms in which he did, and name it as a possible rival even of the great city of Seattle, I desire to say to the gentleman that the city of Bellingham is now the fourth city in the State by actual count.

Mr. Mires: I want to nominate A. L. Black, of Bellingham, for Third Vice-President.

The President: If there is no objection, I will declare the nomination for Third Vice-President closed. The Chair hears none.

Mr. Mires: I move, Mr. President, that the Secretary cast the ballot of the association for A. L. Black as Third Vice-President of this association.

Mr. Thompson: No, no; we want to vote for him ourselves.

Mr. Mires' motion duly seconded, put by the Chair and declared carried, and the Secretary reports that he has cast the unanimous vote of the association for Mr. A. L. Black as Third Vice-President of the association.

Mr. Black: Mr. President, does it require a motion that four years hence this association meet at Bellingham?

The President: No. Now, the office of Fourth Vice-President is vacant and should be filled.

Mr. Arthur Remington: Mr. President, I would nominate Mr. R. S. Holt, of Tacoma, for Fourth Vice-President.

Mr. Remington's motion was duly seconded, and nominations declared closed.

Mr. Porter: Mr. President, there being but one nomination, I move that the rules be suspended and that the Secretary cast the unanimous vote of this association for Mr. R. S. Holt, of Tacoma, as Fourth Vice-President of this association.

Motion duly seconded, put by the Chair, declared carried and the Secretary reports that he has cast the unanimous vote of the association for Mr. R. S. Holt of Tacoma as Fourth Vice-President of the association.

The President: The next officer to be elected is a Secretary.

Mr. Macdonald: I nominate Mr. C. Will Shaffer, of Olympia, as Secretary of this association.

Mr. Hudson: Mr. President, I move that the rules be sus-

pendent and that the President cast the vote of this association for Mr. C Will Shaffer as Secretary.

Motion seconded, put by the Chair and declared carried.

The President: I cast the vote of the association, gentlemen, for Mr. Shaffer as Secretary. The next office to be filled is that of Treasurer, now occupied by Mr. Porter.

Mr. Shank: Mr. President, I move that Mr. Porter be our next Treasurer; that the Secretary be instructed to cast the unanimous vote of this association for Mr. Porter as Secretary.

Motion seconded, put by the Chair, declared carried and the Secretary reports that he has cast the unanimous vote of the association for Mr. Nathan S. Porter, of Olympia, as Treasurer.

The President: We have now to elect three delegates to attend the American Bar Association which meets in St. Louis on the 25th day of September, next.

Mr. John L. Sharpstein: Mr. President, the committee that was appointed to make suggestions for delegates to those two conventions make the report as follows:

We, your committee to whom was referred the selection of candidates for delegates to the American Bar Association and the International Congress of Jurists and Lawyers, beg leave to report as follows:

Delegates to American Bar Association—Edward Whitson, Carroll B. Graves, Will H. Thompson.

Delegates to International Congress of Jurists and Lawyers—Will H. Thompson, Carroll B. Graves, Edward Whitson, Joseph Shippen, Alfred L. Black.

Committee.

This recommendation is made by the committee, with the exception of Mr. Whitson, who protested that he ought not to be there, but by reason of his peculiar qualifications for the position and the fact that he is to be the President of the association, we insisted on putting him in, in spite of his protest.

On motion duly seconded, the report of the committee was unanimously adopted.

Mr. Hudson: Now, Mr. President, I think that the Executive Committee ought to be empowered to substitute any names for any of these parties who may not be able to go. So I make that motion, that if there are any of these delegates who can't go, they inform the Secretary and the Executive Committee be empowered to fill the vacancies.

Motion duly seconded, put by the Chair and declared carried.

The President: There is one committee to be filled; that was the committee for carrying into effect the recommendations of the Committee on Judicial Administration and Remedial Procedure, as to the separate election of judges. I will appoint on that committee, Mr. E. C. Hughes, Mr. John H. Powell and Mr. John L. Sharpstein. Is there any unfinished business before the meeting?

Mr. Whitson: Mr. President, I desire to thank the association for the honor conferred upon me, and on behalf of the Yakima bar to extend a cordial invitation to attend the meeting of the association to be held at North Yakima next year. I assume that the custom will be followed, and it will be a matter of sincere regret to our people, and especially the bar, if you do not come.

Mr. Hudson: Mr. President, I move you that North Yakima be selected as the place for holding the next meeting of the association.

The President: The motion is unnecessary, Mr. Hudson.

Mr. William Hickman Moore: Mr. President, I extend to the members of the committee appointed by this association, looking to legislation in this State, an invitation to draft such bills as they desire presented to the next Legislature, and have them presented to some one to introduce, and not curse the members of the Legislature for not remedying the defects they are supposed to remedy.

Mr. Hughes: Mr. President, I would like to offer a resolution, if the stenographer will take it down.

Resolved, That the members of this association express their regret that no members of the Supreme Court have attended this or any recent session, and that only one or two members of the Superior Court outside of King County have attended this session, and we earnestly invite the attendance of the Supreme and Superior Court Judges at the future meetings of this association.

Resolved, further, That the Secretary be requested to advise the Judges of the Supreme Court and the Superior Courts of this State of the foregoing resolution.

Motion duly seconded.

Mr. Shippen: Mr. President, for information, I would state that formal invitations were sent out, on behalf of the Committee on Arrangement of the King County Bar, inviting and urging each of these occupants of the benches to attend this session of the association, and some judges responded regretting their inability to attend, and one judge, through his stenographer, reported illness as the occasion of his being absent.

Mr. Porter: The resolution as presented by Mr. Hughes seems to me to be very timely. Now, when I was Secretary of this association, I solicited the members of the Supreme Court individually to attend the association. One of them raised this objection. Says he, "We expect at that association—that our decisions may be criticised there, and we prefer not to be present," or words to that effect. Now, I think that those feelings probably have passed away long since, and the association has become known to be an engine of productiveness or that will produce a great deal of good. With that objection probably overcome, I think now that an invitation of this kind sent to the judges will have the desired effect.

Mr. Hughes: We would like to have them understand that if we want to criticise them, we want them here—we want the chance to do it when they are present.

Mr. Hughes' motion put by the chair and declared carried.

Mr. Carroll B. Graves: Mr. President, on behalf of the visiting members of this association, I move, sir, that this association express its thanks to the King County Bar Association, the press of the city and also the King County Fair Association for the kindness and courtesies extended to this meeting.

Motion duly seconded, put by the Chair and declared unanimously carried.

Mr. Root: Mr. President, I move, sir, that it is the sense of this Bar Association that we heartily appreciate the courtesy extended to the association by Judge Hanford in giving us the use of this room for this association, and also that we wish to express our appreciation of the kindly and lively interest which Judge Hanford has taken in this and all recent sessions of the association.

Mr. Hughes: And I would suggest that you add, Judge Root, that the Secretary of this association be requested to send a copy of this resolution to the other judges in this State.

Mr. Root: Yes.

Mr. Hudson: Mr. President, I want to extend all the thanks possible, because I believe in such things, but I believe that this is against the By-Laws.

The President: The latter part is against the By-Laws. I do not think the return of thanks for the use of the room would be against the By-Laws.

Mr. Root: I did not know that By-Laws ran to anything other than officers of the association.

The President: Yes, it is to any member of the association, and the interpretation placed upon it therefore would be in line with the last part of your motion.

Mr. Root: I would like to have it received, Mr. President, as far as it is constitutional.

The President: Gentlemen, you have heard the motion and

it has been duly seconded. All those in favor of that part of it which is constitutional will please say aye, and those opposed no. It is a vote.

Mr. L. Frank Brown: Mr. President, may we not throw a verbal bouquet to the President and return our thanks to him?

The President: No; nothing but cigars after the meeting, Mr. Brown. The convention is now adjourned.

APPENDIX.

APPENDIX.

Address by the President, W. A. Peters

The objects of this Association are to cultivate the science of jurisprudence, promote the administration of justice in this state, uphold and advance the standard of integrity, honor and courtesy in the legal profession, and to establish and cherish a spirit of brotherhood among its members.

Meeting as we do but once a year, perhaps the most that we can accomplish of our serious work, is to take our reckoning and shape our course for the coming year to work out through various committees and individual effort in our several fields the purposes of our organization.

As a part of this system of work, it is one of the duties and privileges of the presiding officer to suggest for consideration by the Association such matters of legislation or policy as may tend to promote the above objects.

This I take to be the chief function of the annual address imposed by our by-laws on the President.

This convention is the sixteenth annual meeting since the organization of the Association in 1888. From that date, it is safe to say, the membership of the bar throughout the state has doubled and trebled itself many times over. But a commensurate growth is not to be observed in the membership roll of this Association. Taking the last nine years, of which I have the reports before me,—we numbered in 1894, 145; the following year 194; in 1897, 222; 1898, 250; 1899, 239; 1900, 231; 1901, 257; 1902, 223; 1903, 233. That is, in the nine years, and at least five of these compassing a most phenomenal growth in the state bar at large, our ranks have been increased by not more than 88 new members. What is the reason for this? We have done good work, our meetings have been a credit to the profession and to the state, the papers heretofore read have covered subjects of living interest to the profession at large and show rare ability and effort. They have been appreciated at the time by those in attendance, and the dissemination of our annual reports has brought frequent and hearty commendation from similar associations in the older states, with ill concealed sur-

prise at the character of our work, the best evidence of the sincerity of their congratulation. And yet we are practically at a standstill as to numerical increase. Nay, we are today twenty members less than we registered in 1898. It must be that we are not accomplishing results along practical lines. We are too easily content to meet, thresh out useful problems of salutary legislation and desired reforms in matters of practice, adjourn and trust to their finding their unguided way into the statute books or among the rules of court.

We are a practical people and ours is a practical age. The lawyer of today is none the less a thinker but a doer also. We must make our Association and its influence felt in the every-day world of the Bar. So that every attorney shall feel that he cannot afford not to be a member with us.

The professional standard we advocate is the right standard, and we must look to it that we live up to it within our ranks, and enforce similar observance from others. We must greet the young practitioner, and the new comer amongst us, with that welcome which we sincerely cherish for him at heart, if he be of the right kind, and we must go out to help him. But, at the same time he must know, that his professional conduct and methods of practice here will be measured by a standard of integrity, honor and courtesy, fully as high as that prevailing at the strictest bars of the older states. The high standard of legal ability and professional courtesy, of which our bar as a whole can justly boast, is apparently a gift of nature rather than of artificial nurture.

Drifting hither as we have, from all corners of the continent, with the westward tide, we have found the pioneers of our profession, not men seeking asylum for a disappointed career, nor briefless lawyers fleeing the competition of the crowded centers, but men of high standing and ripe experience at the Eastern bar, drawn westward by that destiny which ever lures the adventurous and the vigorous, and of that fortitude and love of honor which ever distinguishes the pioneer, whether beyond the mountains and through the trackless wilderness, he marks the way for a nation's growth, or in less heroic pose, stands guard over the home, the liberty, or the life of his fellow man.

The professional lives and characters of these men have, up to recent times, left their impress upon those who have slowly drifted in about them. Our professional intercourse has been a constant pleasure. The word of a brother lawyer has been not only as good, but fortunately, as to ultimate satisfaction, better than his bond; defaults claimed, and the over-technical advantages of the pettifogger have been unknown amongst us. We have

fought hard but we have fought fair, and between shots we have swapped tobacco and yarns, as did our fathers before us.

With a rapidly growing bar of such dimensions as we now have, that personal acquaintance which has heretofore maintained amongst us this high standard of practice and professional courtesy is fast growing impossible,—and we need now of all times the influence of this Association in this direction. Such meetings as these, forming new, and renewing and cementing old friendships, are a great safeguard; and on such occasions we find opportunity to reflect, and reflecting to stand fast for the dignity and honor of that profession to whose service have been dedicated so many great minds and noble souls. As to some method of fostering and maintaining this proper standard of ethics, happily there is to be read at this meeting a paper which will doubtless present an acceptable solution. With reference to the establishment and maintenance of a proper mental standard for admission to our state bar, the operation of the present practice is I think worthy of our grave consideration. While the law as it now stands contemplates a more or less personal scrutiny by the Supreme Court of the qualifications of an applicant, assisted by a committee of three members of the bar, the former is necessarily in theory only, owing to the otherwise arduous labors with which the members of that court are already burdened, especially at the opening of the term when these examinations are held; and the latter is not calculated to prove a success. This committee of the bar is usually made up of three gentlemen from different counties of the state, who by previous arrangement, by mail, prepare a list of questions upon separate subjects. They meet for the first time in Olympia, the morning of the examination without previous personal conference or consultation; they check over the papers handed in, then report to the court and give place to another committee similarly appointed for the next examination.

Hardly can we look for the establishment of a systematic or uniform standard of qualification in such practice. Out of fairness to the bar on the one hand, and to the applicant, on the other, such matters should have the deliberate consideration of the examining committee, a full exchange of views on the scope of the examination, the subjects of inquiry and the standard to be required, and conformance to the latter should be rigidly exacted. To effect this, it seems to me, that there should be a standing examining committee of some permanence in each of such of the large cities of the state as the Supreme Court may from time to time designate, say in four cities at present, the committee to be appointed by the Supreme

Court as now, but for a term of three years. Applications for admission filed with the Supreme Court semi-annually could be referred to these various committees as the convenience of the applicant's residence might suggest.

Men living in the same city will meet together and give the matter that serious attention which it deserves,—while the same men will not, and often cannot, spare the time for a trip to Olympia of several days. The busy man is usually the fit man; but the best and most zealous of us need more than one such experience to properly grasp the situation, and be of efficient service on an examining board. The law is indeed a jealous mistress. The ill-prepared practitioner is often likely to seek the devious ways of sharp practice to compensate for his poor equipment, and, once losing the respect of his fellows he becomes a freebooter.

Proper equipment for the law requires a devotion and self-sacrifice, which ennobles the mind of the student to watch with equanimity the meteoric course of the pettifogger, and to bear with patience the long waiting which is usually the price of an honorable practice.

Exact from the lawyer at the outset this test of the sincerity of his devotion to his calling; if he survives it, in his hands the honor of our profession is safe.

I take the liberty of making these suggestions for the consideration of this meeting, because, by force of circumstances as well as by courtesy of the court, the responsibility of this matter has been placed largely with the bar and it is our privilege and our duty to see that we assume it.

TIME OF HOLDING ANNUAL MEETING.

Our last general meeting referred to the executive committee the question of determining the best time for holding our annual conventions. Unfortunately the matter was not taken up by this committee until too late in the year to arrange for any substantial change from the present time. The summer vacation, and especially the midst of it, is in my mind an especially unfortunate time to bring out a fair attendance of the members. Attorneys as a rule cannot attend without sacrificing their plans for that change and recreation which they have been anxiously looking forward to during the busy term. The courts closing about the first of July, it is demanding more than the majority of us will give to ask that we wait about our offices for fifteen or twenty days for these meetings. Moreover, in the winter time, those of us at least who are from west of the mountains, have much fewer distractions at that season, or indeed at any other season than midsummer, and perhaps would be willing to give the time and energy to

the serious work of this association at that season which cannot be counted upon after the break up of the term.

I recommend, therefore, that we consider this question in this convention where we can obtain the views of the members from all over the state as to what will best suit their convenience and wishes.

PROPOSED CONSTITUTIONAL AMENDMENT PROVIDING FOR A SEPARATE ELECTION OF JUDICIAL OFFICERS.

To both the conventions of 1902 and 1903 the committee on jurisprudence and law reform reported unanimously recommending the amendment of Section 3, Article 4 of the State Constitution so as to provide for the separate election of the Supreme Court judges and for the term of eight years (with the right of the legislature to enlarge that term), and also a recommendation for the amendment of Section 5, Article 4 of the Constitution, providing for the election of superior court judges to be held throughout the state at the same time as the elections for judges of the Supreme Court, to hold for four years (also with the right of the legislature to enlarge that term). These recommendations were adopted by the Association at its last meeting as shown at page 26 of the report of that meeting. Nothing towards the practical accomplishment of the matter, however, appears to have been undertaken; doubtless from the fact that there was not to be, and has not been, a legislative session until January, 1905.

We should, I think, determine whether this is still the sentiment of the Association in whole or in part, and if so obtain the expression thereof and adopt proper measures to put this in practical force before the next legislature. Moreover, we should keep before us throughout this meeting that whatever is to be accomplished by remedial legislation should be determined upon at this meeting, at least in such definite shape, as that the details can be left to be worked out by appropriate committees without referring the matter back to a general meeting, as such meeting will not occur until after the adjournment of our biennial legislature.

DIVISION OF THE STATE INTO TWO FEDERAL DISTRICTS, AND THE APPOINTMENT OF AN ADDITIONAL JUDGE.

That the importance of this district, the volume of litigation and the magnitude of interests involved demand the division of our state into two Federal Judicial Districts and the appointment of an additional Federal Judge, have been for so long the unanimous and oft declared sentiment of the bar that the question is no longer open to argument.

Were it not for the tireless energy, phenomenal capacity for work, and distinguished ability of that honored member of our body who keeps abreast of this overwhelming accumulation of federal judicial business, we should have such a condition of affairs as would force us through tedious delays and tardy justice to demand that immediate relief to which we are so long entitled.

Bills for this relief were before the last federal congress, but largely through inability of opposing advocates to agree upon a division of districts by an east and west, or by a north and south line, these bills died aborning. It will be highly proper for this Association at this time to determine what judicial subdivision of the state will in its mind best subserve the convenience of the court, the interests of litigants, and the despatch of business, and to urge the passage of a bill by the next congress embodying this conclusion.

No decisions have emanated from our state, or from the Federal Supreme Court, during the past year, to especially demand the attention of the bar, except the one notable instance of the so-called "merger decision" filed by the United States Supreme Court, March 14, last, entitled the Northern Securities Company against the United States.

And this case is remarkable, rather from the magnitude of the interests involved in the litigation, than from the enunciation or application of any new principle of law; and it is certainly not marked by a departure of the Federal Supreme Court from its time-honored custom of dissenting on all Constitutional questions of grave political or economic moment.

This "dissenting habit," pronounced to an unusual degree, in the above instance, by reason of the great affairs supposedly at stake and of the widespread interest with which the decision was awaited by the public at large, has provoked from people and the press, no little criticism, and genuine alarm, that the foundation principles of our institutions, our laws, our rights and liberties are apparently subjects of such uncertain interpretation.

The incident has led me to give some more or less cursory consideration to the matter, to find how well founded is the criticism; and if so, then to discover whether this want of harmony in the judicial mind could be measured or plumbed, its periods of recurrence foretold, or its probable paths traced out.

This I have done partly from idle curiosity, and moved a little no doubt by the thought that to discover this was a lodestone to professional suc-

cess. For what is a knowledge of law to an intuition of what the court will find the law to be?

In this inquiry I have covered the period from the organization of this court at its February term, 1790, to the October term of 1884, a span of ninety years, beginning with the period of the earliest judicial interpretation of our Constitution, the days of its infancy, when it was regarded with suspicion, distrust and hostility by many, and anxious solicitude by all, calling for the wisdom of an expounder, commensurate with, if not greater than, the foresight of the designer,—covering, too, the experimental period of our financial system, engendering disputes between the advocates of national and state banks, and bringing down the hot disputes on questions of legal tender, settling the questions of states rights and federal limitations, and then the bitter days of antislavery agitation, secession, civil war, and the trying ordeal of reconstruction; down through, the founding, at least, of the doctrines of commerce between the states. Add to this span a consideration of the income tax cases of 1894, the insular or colonial cases arising under the Foraker bill of 1900 and the merger case last above referred to—these latter presenting if not the only, at all events the most likely instances to provoke the display of partisan bias, to which this august tribunal has been subjected during the past twenty years of otherwise uneventful peace,—and if in this compass we do not find the answer to the problem, we can seek elsewhere in vain.

In running through these cases I have endeavored to divide them fairly in two classes; putting in one class those cases involving questions of public moment and of political or partisan differences, and in the other those concerning more especially matters of private right and of jurisdiction from a non-political standpoint, and questions of practice.

For instance, in the former class would fall the Dred Scott case, the interstate commerce cases, the right of state to impose tonnage duties, and taxes upon alien immigration, and the legal tender cases. In the latter I have placed the Dartmouth College case, the case of the Genessee chief, defining admiralty jurisdiction, the bankruptcy decisions, the ownership of river and lake beds, whether federal or state.

In listing these I have endeavored to avoid duplication by omitting decisions which were controlled wholly or substantially by former rulings and which excluded independent reasoning. And also have not treated as dissent cases those where members of the court have disagreed as to the reasoning but were unanimous in the conclusion reached.

It appears from this method of classification of such cases as I have

been able to examine that out of thirty-five original decisions upon political or partisan questions there were but six, up to 1884, in which the court was unanimous, and twenty-nine by a dissenting court. On the other hand upon questions of private right, admiralty and practice, out of 213 decisions during the above period 48 were by a dissenting court and 165 unanimous.

In some of these the dissenting members were in marked minority but in most the controlling conclusion is by a narrow margin. In one instance at least, that claimed my attention, the court stood four opposed to four, when its membership was eight. This involved the right of the Federal Circuit Court of the District of New York to enjoin the erection by a private corporation of a bridge across the Hudson river at Albany, which had been authorized by state law; as a hindrance to navigation. Singularly enough the judges in circuit were divided and certified the question up to the Supreme Court, which returned the record with the following frank statement: "This court after hearing the arguments of counsel for the respective parties and upon consideration of the first question are equally divided in opinion and consequently, no instructions can be given to the court below concerning it." The record is returned below "for the purpose of enabling that court to take action upon them, and such further proceedings as the rules of court or principles of law may require."

Whatever became of the bridge or the man with the steamboats trying to pass it I didn't find out; maybe he is waiting there yet until somebody will discover what his rights are. It is safe to say that the lawyer who would attempt to convince these litigants that law is a science would have no easy task.

In what are known as the Passenger Cases—decided in 1849 (*Smith vs. Turner and Norris vs. City of Boston*, 7 How., 284, 12 L. Ed. 702) wherein statutes of the state of New York and of Massachusetts, imposing taxes upon alien passengers arriving in the ports of those states were declared unconstitutional by a decision of five judges to four,—each individual member of the bench wrote a separate opinion, announcing his agreement on some points with the majority opinion, and in other particulars concurring with the reasoning and conclusion of the majority. For instance the reporter states, "Mr. Justice Catron concurs in the foregoing opinion and adopts it as forming part of his own, so far as Mr. Justice McKinley's individual views are expressed, when taken in connection with Mr. Justice Catron's opinion."

Now I submit that this note or explanation of the Reporter is subject

to a motion to make more definite and certain, but a glance at his task will show compliance impossible.

It is for a wiser head than the Reporter's or mine to develop any system out of this chaos.

The legal tender cases also deserve attention in this inquiry. (*Hepburn vs. Griswold*, 8 Wall., 603 19 L. Ed. 513, *Knox vs. Lee* and *Parker vs. Davis*, 79 U. S. 457, 20 L. Ed. 280.)

These cases involved the constitutionality of the legal tender act of 1862. In *Hepburn vs. Griswold*, decided December, 1869, the act was declared invalid as to pre-existing contracts. Chief Justice Chase writing the majority opinion.

The cases of *Knox vs. Lee* and *Parker vs. Davis* argued in November, 1869, were reargued several times and eventually decided May 1, 1871. And, lo, the statute of 1862, which was contrary to the constitution in December, 1869, was good and valid in 1871, both as to pre-existing and as to subsequent contracts.

It happened that since announcement of the decision in the *Hepburn* case Judge Grier who had stood with the majority against the constitutionality of the act had resigned and been replaced by Justice Strong and an additional justiceship had been created under the law of 1869 and filled by appointment of Justice Bradley; and so in 1871, without any change of opinion on the part of the personnel of the bench, Chief Justice Chase found himself writing a dissenting opinion for the minority of four against five.

But the chief justice had a more difficult task, perhaps, in explaining how it was, that as head of the treasury, he had successfully pressed the passage of the same legal tender act, as an administrative measure, which now as judge of the Supreme Court he found unconstitutional. He frankly meets it announcing that "Examination and reflection under more propitious circumstances have satisfied him that his opinion was erroneous and he does not hesitate to declare it." Thus furnishing a commendable example of independence of thought and frankness, if not of consistent reasoning.

Falling upon the *Dred Scott* case one would say he had found the hidden cause of this judicial dissent, in political bias. Here was a negro, a slave in Missouri, moving with his master to Ohio, a free state, for temporary residence, then returning to a slave state and suing for his freedom on the ground that having become a citizen of a free state he was such throughout all the states, and suing in the federal court on the grounds of diverse citizenship, as a citizen of the United States. Chief Justice Taney of Mary-

land, Wayne of Georgia, Daniel of Virginia, Campbell of Alabama, and Catron of Tennessee, a majority held against his contention for citizenship for any purpose, while Justice Nelson of New York, Grier of Pennsylvania, McLean of Ohio, and Curtis of Massachusetts, held as squarely and solidly for him. The South against the North, the slave state against the free. (*Dred Scott vs. Lanford*, 15 L. Ed., 691, decided 1856.)

On the other hand, in *ex parte Garland*, decided in January, 1867, and involving the constitutionality of the act of congress requiring amongst others, counselors and attorneys of law courts to swear that they had never borne arms against the United States or supported or aided the Confederate cause—a court made up of six republican appointees and two democrats held the law unconstitutional, at least as to Garland's case—this was a pet measure of the war party and the public temper in 1867 was more bitter from the sorrows and losses of civil war than from the inflamed arguments of party strife ten years earlier.

Turn now to the important cases of our own and more recent experience. The income tax cases of *Pollock vs. Farmers Loan and Trust Co.* and *Hyde vs. Continental Trust Company*, decided in 1894. The question here involved was the construction of the act of 1894, imposing a tax on rents or income of real estate as being a direct tax, not apportioned according to representation and therefore against the constitution. Again a party measure, and one which had been tried out in many a turbulent political campaign. The court passing upon it was made up of six republicans, the predominant party, and three democrats. The act was declared unconstitutional in an opinion by the chief justice, a democrat, with whom concurred one of the remaining two democrats, and three republicans, and opposed were one democrat and three republicans. This was the standing of the judges on the rehearing of the case. Upon the first argument, at which one of the judges did not sit, there were but two dissenting, the absent judge joined the dissenters and another had changed his view since the former hearing.

In the insular cases decided in 1900, determining the status of Porto Rico and simular territory acquired as the result of the Spanish-American war, and being again directly the construction of a party measure—the Foraker bill—and involving a tariff issue, the same members who sat in the income tax cases divided five to four in their judgment, one of the minority political party being aligned with the majority of the court, and the other two with two republicans dissenting.

In the merger case it is true, the members of the court were divided on almost strictly party lines, three of the minority political party standing with one of the predominant party against five of the latter.

This substantial division of opinion in this case is worthy of passing note, in view of the fact that all of the judges base their arguments upon the definition of interstate commerce laid down by Chief Justice Marshall in the case of *Gibbons vs. Ogden*, which has formed the fundamental principle of the law on this subject for all subsequent time, and in this case of *Gibbons vs. Ogden* there was no division of opinion, although the court as then constituted was more given to disagreement than any combination of members before or after.

To segregate, or tabulate, these cases of divided opinion in any statistical manner on the basis of the political faith of the members of the court is a hopeless, if not impossible task. Whig is allied with democrat in opposition to whig and democrat; democrats stand with republicans and the latter are divided against each other; anti-imperialist joins with imperialist in projecting the bounds of the constitution.

The presence of party bias as suggested in the merger case and clearly apparent in the *Dred Scott* case, proves upon wider examination of decisions to be, in fact, of rare occurrence. On the contrary, so many are the decisions in which the judicial opinions are directly opposed to the tenets, doctrines and measures of that political party to which the writers of those opinions owe judicial preferment, that the conclusion is irresistible that while this division of judicial opinion occurs most frequently in cases involving questions of a political nature, in the sense of party doctrine, these opinions themselves are not colored by partisan prejudice or personal bias.

While the rights and liberties of the individual and the methods of practice, whereby they are asserted and maintained, have ever received of this court the full consideration to which they are entitled, yet matters of great public moment and the larger questions of constitutional interpretation, affecting the foundations of government, have necessarily called forth a conscientiousness of research and an earnestness of consideration proportioned to the gravity and to the far reaching effect of their decision.

So Justice Daniel prefaces an apparently reluctant dissent, saying, "Differing from the majority of the court in the decision just pronounced, I might nevertheless have been disposed to acquiesce in that decision, had it related to questions merely of property or of individual interests; but embracing as it does, a construction of the constitution, and annulling

at the same time a legislative act of a sovereign state, I cannot feel warranted in yielding by silence a seeming approbation of conclusions which my judgment entirely repels."

The graver the responsibility the more serious the thought, the more tenacious the thinker of his conclusion, but not to exploit the political views of the individual or to justify himself before his party; his appointment is subject to no party's pleasure, it is for life, he has no party but the nation, no future but the honest fulfillment of his high office.

Says Judge Field in his farewell address upon retirement from this bench: "As I look back over the more than a third of a century that I have sat on this bench, I am more and more impressed with the importance of this court. Now and then we hear it spoken of as an aristocratic feature of a republican government. But it is the most democratic of all. Senators represent their states, and representatives their constituents, but this court stands for the whole country. * * * It has indeed no power to legislate. It cannot appropriate a dollar of money. It carries neither the purse nor the sword. But it possesses the power of declaring the law, and in that is found the safeguard which keeps the whole mighty fabric of government from rushing to destruction. This negative power, the power of resistance, is the only safety of a popular government."

Approaching this subject somewhat as an idler, I have stopped to wonder at the patience, the tireless research, the wisdom, the calm judgment in times of national panic that characterize the opinions of our federal judiciary as a whole, whether these be by a divided or a unanimous court and I am brought to confess that this tendency to dissent is less an indication of weakness in this branch of our government than an earnest of the deep feeling of responsibility with which this high trust is fulfilled and that there is indeed justly due, that implicit obedience, that profound respect with which the people have ever bowed to the decisions of this last arbiter of their rights and liberties.

SHOULD ONE CORPORATION OWN AND VOTE STOCK IN ANOTHER CORPORATION.

The Committee on Jurisprudence and Law Reform at the last session of this Association, among other recommendations made the following:

"We recommend a change in corporation laws so as to permit domestic corporations to acquire, vote and dispose of stock in other corporations as fully as private individuals may under the laws; so that this state may be in line on that subject with the progressive states throughout the east. We believe that all possible safeguards should be maintained to prevent the oppression of the people by vicious trusts or by monopolies, but we are satisfied that that can be done by general laws applicable to all classes of persons and corporations; and that conceding that that protection is to be given, the tendency of today is to give every facility to combination. We believe that our laws should not be so insular, so vicious, or so adverse to the progressive tendency of the age that our home capital should seek the protection and powers given them by incorporating under foreign laws rather than under the laws of this state."

The report of the committee was not adopted as regards the above quoted portion thereof, but the same was made a special order of business for this session of the Association, and I have been honored by the executive committee of the Association to present the affirmative side of the proposition.

Although corporations date their existence many thousands of years ago, as we have good authority that they existed in Greece as early as the time of Solon, and even among the Romans at an earlier date, their antiquity has not been a guaranty against a somewhat general and popular prejudice or fear as to them, and while their origin is found in the misty past, their practical growth and development as factors in the commercial and business world has been limited practically to the last century. Even at this time they are regarded by some as requiring the application to them of rigid rules of law not deemed necessary to apply to individuals or co-partnerships. The progress of the age and the development of the world's material industries, and the large part which corporations have taken, or rather which individuals through the agency of corporations

have played in the development thereof, and the consequent multiplicity of corporations, have served to lessen the popular and general fear of corporations, and to render apparent the numerous beneficial results thereof. This, however, is but carrying out what appears to be a law of nature, in that radical or heretofore unknown agencies are not at first altogether welcomed or approved. As bearing upon the proposition under consideration, let us see what substantial difference there is between a corporation in the transaction of business and that of an individual or a co-partnership. The corporation has capacity to enter into contracts—so has the individual, and in the abstract the corporation has no greater power to contract than has an individual. The corporation has the capacity to take, hold and convey property—so has an individual. And in the abstract, a corporation has no greater power in this particular than has an individual. The corporation has the right to be sued, but no greater right to exercise this glorious privilege than has an individual. The corporation has the right to sue, and this is a privilege also vouchsafed to an individual. A corporation is not by law given any greater right than an individual to commit a tort. A corporation may transact its business under a name and is given the right to have a seal, but the rights in this particular of a corporation are no greater than that of an individual. The property and all the rights of a corporation, including its franchise, are amenable to the law for the payment of its debts to an even greater extent than that of the individual, inasmuch as the exemption laws do not apply to corporations. There is one privilege or right, however, held by a corporation not possessed by the individual, and that is the capacity of succession, or as expressed by Chief Justice Marshall, the capacity of "immortality." Therefore, this being the chief mark of difference between a corporation and an individual, let us consider whether this point of difference in itself constitutes any reason why one corporation should not own and vote stock in another corporation. The attribute of succession, or the capacity to exist as the same body, notwithstanding the death, withdrawal or change of numbers of its members, I submit has neither any direct or indirect bearing upon the proposition under discussion. In all countries, corporations are given the attribute of a continued existence, or as under the laws of this state, for a prescribed number of years, therefore it is to be presumed that this attribute or right conferred upon corporations is for the best interests of the corporation and its stockholders, and in nowise prejudicial to the general public, or this right would have been curtailed and the error thereof have been seen many years ago. How-

ever, if this distinguishing mark of difference between a corporation and an individual should in the remotest degree have any bearing in the solution of the proposition under discussion, the remedy can easily be found in limiting the life of a corporation to the average life of mankind. It is important to note upon the chart of a nation's progress the means or agencies employed. What nation has surpassed that of our own in national progress and development? What nation in the last one hundred years has equalled that of the United States in gigantic enterprises and the development of its resources? And what nation exceeds that of the United States in the number of corporations organized for trade and commercial purposes? We must not lose sight of the fact that a corporation merely consists of two or more individuals organized for the transaction of business, and which gives to them a simpler and more convenient method of transacting their business. The mere fact, therefore, that the corporation constitutes merely a means of simplifying and rendering convenient to individuals the transaction of business does not constitute any reason why one corporation should not own and vote stock in another. The importance and the very necessity in this age of rapid progress and advancement for the resort to corporate existence to simplify and render more convenient the method of transacting business is daily becoming more apparent. A principle or rule of law should have a reason for its existence, and if the reason assigned for its existence is either originally unsound, or by reason of material developments or progress of the age has ceased to exist, then I assume it to be a legal postulate that the legislative department of the government should keep pace with trade and commercial progress. The existing law upon this proposition, as stated by the numerous text writers, is that one corporation has no power either to subscribe for or purchase shares of stock in another corporation unless such power is expressly conferred upon it by its charter, or unless the circumstances are such that the transaction is a necessary or reasonable means of carrying out or accomplishing the objects for which it was created. Our Supreme Court has had before it this question and has adopted and applied the rule above stated (25 Wash., 492). Our Supreme Court in passing upon this question, did not undertake to assign the reasons for the rule, but simply quote approvingly from different text writers of the existence of the rule, and applying the same to our local statutes, say:

"Our statutes cannot be said to authorize such ownership of stock any more than the authority to subscribe for capital stock. The expression of such power in the articles of incorporation of the new company, as has been

observed, cannot extend the corporate powers beyond those expressed in the statutes."

We are considering, however, the question under review independent of either case or statutory law. But it becomes important to ascertain the reasons assigned by the courts for the rule, and it becomes further important to ascertain whether, if the rule was originally sound, changed conditions should produce a change in the law. The leading text writers in collating the reasons assigned by the courts for the rule, have assigned as the reasons therefor the following:

Mr. Thompson in his work on corporations, in speaking of this matter, says:

"Such purchases are the subject of special disfavor where one corporation purchases the shares of another corporation engaged in a similar business for the express purpose of absorbing and controlling it with a view of defeating competition, etc."

Clarke & Marshall, in their work on corporations, assign the reason given by the Supreme Court of Ohio, wherein that court assigns as the reason for the rule the following:

"Were this not so, one corporation by buying up the majority of the shares of the stock of another, could take the entire management of its business, however foreign such business might be to that which the corporation so purchasing said shares was created to carry on; a banking corporation could become the operator of a railroad or carry on the business of manufacturing, and any other corporation could engage in banking by obtaining the control of the bank's stock."

While other courts and text writers have expressed the reason for the rule somewhat differently, in substance the two reasons above set forth constitute the reasons or groundwork for the prevailing and existing rule. Let us examine the last quoted reason first, viz:—that one corporation should not be permitted to own stock of another corporation, for the reason that it would enable the purchasing corporation to transact business foreign to that for which it was created. We are now testing this question as as applied solely to what should be the law of this state. When we historically consider the reason for the rule as given by the Supreme Court of Ohio, the logic of this rule has no practical existence as applied even to the existing corporation law of the state, for the reason that, let it be borne in mind, that the early corporations of this country, and that of some other countries, were created either by express enactment of the legislative department or under statutes narrowly limiting the powers of the corpora-

tion. This restricted power, however, is largely limited to a past age. Instead of a corporation being created or permitted to transact and carry on one certain line of business, they are now incorporated under general laws, particularly in this country, which laws generally extend the right to incorporate for the transaction of any and all legitimate trades and business. For instance, the general incorporation statutes of this state provide:

"Corporations for manufacturing, mining, milling, wharfing and docking, mechanical, banking, mercantile, improvement and building purposes, or for the building, equipping and managing water flumes, for the transportation of wood and lumber or for the purpose of building, equipping and running railroads or constructing canals or irrigation canals, or engaging in any other species of trade or business, may be formed, etc.

Therefore, historically considered, the corporation law of this state and of many of the other states of this country, have but little relationship to the specific legislative acts of incorporation or the earlier corporations above alluded to.

Therefore, the reason for the rule above given, viz: that if one corporation be permitted to own stock in another it may thereby be indirectly transacting business not warranted by the charter, conceding for the purpose of the argument may be forceful as applied to conditions then existing, I contend that it has ceased and that its force should be considered as having been spent upon conditions heretofore but not now existing, for the reason that if the rule as above stated could be considered applicable, then the general incorporation law of this state should be changed in order that the rule may not under the law as it now exists be broken. Under our statute a corporation organized for the purpose of doing a manufacturing business or managing water flumes or constructing irrigation canals, are also authorized, if so provided in its articles of incorporation, to do a mining, milling, wharfing, wood and lumber, equipping and running railroads or any other species of trade or business. Therefore, in order to render inapplicable the reason for the rule as above stated, viz: that a corporation by owning stock in another corporation may transact business not warranted by its charter, has but to express in its articles of incorporation such power exercised by such other corporation. Not only is the right above referred to given by the statutes of this state, but how freely are the invitations of the statute accepted by the general public in the organization of corporations? How fully conscious is the bar of this state of the plenary and almost unlimited powers reserved, or rather expressed by the average corporation in its charter? This right and power is freely

given by our law, and there does not exist any good reason why any modesty should prevail in acceptance thereof. Each of you doubtless call to mind the numerous instances when you have been called upon by your clients to prepare articles of incorporation that at the suggestion and request of your client you have expressed an incorporated power after power, similar and dissimilar, until the catalogue of powers have been exhausted; and then, to make assurance doubly sure, lest some right or power may have unwittingly escaped, it is blanketed with the general clause, "And all other power, right and authority necessary or proper to carry out the business for which this corporation is organized." Therefore, the average corporation, like Alexander the Great, having no new world's to conquer and no further power to acquire, is not very likely to go in quest of stock of another corporation possessing powers or conducting business different from itself. There has doubtless come under the observation of each of us some unique features of corporate organizations along the lines we are considering: For instance, I call to mind a corporation that was organized for the purpose, first, of buying and hiring horses; and second, for the purpose of buying and selling real estate,—two objects as to which the doctrine of caveat emptor at least has not the same application. Therefore, going back to original conditions under which the existing rule was established, let us consider the force thereof. We are now considering the rule that one corporation should not be permitted to hold and control stock in another corporation, because it would be permitting the purchasing corporation to transact a business foreign to its charter. There is not now, and was not at the time of the establishment of this rule of law, any rule or provision of law prohibiting the individual stockholders of the corporation from investing in such other corporation. What substantial difference therefore, could there be in permitting one corporation which is simply an entity composed of individuals, from owning stock in another corporation which stock so acquired, as a practical proposition, belongs to its stockholders, and thereby receiving the benefit of an investment in one corporation instead of two corporations? It may be a simple and more convenient method for the investor to transact his business, and the general public not being prejudiced or injuriously affected thereby, the prohibition should not exist. We are now considering the reasons for the rule independent of combinations or consolidations of corporations for wrongful and illegal purposes, and independent of anti-trust laws. I will hereafter discuss this feature of the question. Furthermore, the reason being simply that the corporation may transact business not warranted by its charter merely casts

upon the stockholders or members of the corporation the inconvenience of organizing another corporation for the transaction of business not possessed by the original corporation. This is an inconvenience and a complication of business transactions for which I submit no good reason exists.

Let us now consider the further reason assigned for the rule by Mr. Thompson in his work on corporations, viz: that if such rule did not exist competition would be defeated. What I have above said as to the powers exercised by the modern corporations as compared with those existing in former years, is applicable to a discussion likewise of the reason for the rule assigned by Mr. Thompson. While the fear entertained by the earlier courts, of the prevention of competition if the reverse of the existing rule should prevail, while theoretically admitted as sound, is practically without force. If the two corporations exist and are transacting business in the same place or community, the purchasing corporation could practically accomplish by the organization through its stockholders of a second corporation the same object in this particular by the organization of such additional corporation rather than by the acquisition of stock in another. And if the two corporations are transacting business in different places the stockholders of the purchasing corporation could likewise accomplish the same result by the organization of another corporation, and thereby carry on business under the name of two corporations in two different places; or if need be, could transact business in different places through the same and original corporation. All of us know that as a practical proposition that these methods of organizing another corporation by the stockholders of the original corporation or the carrying on of the business by the same corporation in different places, is resorted to; therefore, practically and substantially considered, competition is no more and can be no more affected by the ownership by one corporation of stock in another than by the establishment of either branch houses or additional corporations by the same stockholders. Furthermore, by permitting a corporation to own stock in another corporation, even though the two are conducting the same line or character of business, will no more result in preventing competition than by the same set of stockholders owning the stock of the two corporations. The proposition under discussion, however, is not confined to competing corporations or corporations carrying on the same character of business. If the two corporations are carrying on and conducting different lines of business, then the element of the prevention of competition is absolutely lacking as a reason for the existing rule. In this connection I may be permitted to indulge in a little anticipation. I am

informed that Judge T. L. Stiles has been selected by the executive committee of this Association to represent the negative of the proposition under discussion. In the brief discussion before the last session of this Association of this proposition, Judge Stiles opposed the same, assigning the following reason:

"The decision of the courts always ran upon the ground that public policy forbade any such thing unless the statutes provided it might be done. That is my principal objection—on the ground of public policy—because I am opposed to the New Jersey idea."

Knowing the great learning of my distinguished adversary, I assume that in his remarks made on that occasion he assigned at least the principal reason for the existence of the rule, viz: public policy. This reason, however, is general in its nature, and is but the expression of a conclusion. The reason rendering the proposition contrary to public policy is not found merely in the words "public policy," and we must therefore go back of these words for the reasons for the use thereof, and when reduced to their analysis, I assume it will be found to have for its basis the two reasons heretofore given and heretofore discussed.

In conclusion, let us view this matter in the light of anti-combination and anti-trust laws. Laws of the nature last mentioned are practically of modern origin and growth. But when tested in the light of such anti-combination and anti-trust laws, the reasons for the rule of law we are discussing, if originally sound or meritorious, have been nullified by the laws directed against the formation of trusts and wrongful combinations. Therefore, if existing anti-trust laws and laws directed against wrongful combinations of individuals and corporations are not adequate or sufficient in themselves to accomplish the desired end, the right and power to correct these evils is in the hands of the national and state governments, with the opportunity presented biennially, if not annually. Therefore I submit that viewed in the light of existing statute law, and viewed in the light of both national and state legislation directed against illegal and wrongful combination and the formation of trusts, the reasons for the rule prohibiting one corporation from owning stock in another have ceased to exist; for as we have seen, corporations under general incorporating statutes of various states are practically unlimited in their powers and authorities, and are given carte blanche authority to transact almost any and all kinds and character of business, howsoever varied and diverse one character of business may be from that of the other, and the charter of such corporations need not be infringed by the acquisition of stock of another corpora-

tion authorized to transact a different character of business, and the prevention of competition feature is eliminated by both national and state legislation referred to relative to trusts and wrongful and illegal combinations; and hence, if the individual stockholders composing the membership of one corporation should elect as a corporation to invest its surplus earnings in another corporation transacting at least an entirely different and disconnected line of business, no reason in logic exists, and every reason, if any in law which has existed has passed into final judgment. So universally have individuals now become accustomed to resort to the corporation method as a convenient, satisfactory and at the same time harmless, method of transacting their business, and so universally have corporations by affording a convenient and businesslike method of transacting human affairs become potent factors in all trade and commercial transactions, that the ancient bogey feature popularly existing against corporations should likewise be remitted to the past.

ALFRED BATTLE.

SHOULD THIS STATE PERMIT CORPORATIONS TO OWN AND VOTE STOCK IN OTHER CORPORATIONS?

(Negative.)

Stated as broadly as this question is it would seem that the negative should have an easy task to defend itself.

It may be that there are some kinds of corporations that could be entrusted with this power, to a limited extent and under carefully expressed restrictions. Perhaps it would be safe to allow it to purely investment corporations, like savings banks and insurance companies, if they were barred from acquiring control and from making combinations for control. But there are other corporations, and they embrace nine-tenths of all, to which no such a power should be granted, under any circumstances, with even the closest restrictions; and, because of the difficulty to properly guard against the abuse of the power, it is clearly the best policy that no corporation have it.

Courts of the last resort, both in England and the United States, for more than a generation, have been deciding against the right of one corporation to own and vote the stock of another, without express statutory authority for it, and in their decisions almost every imaginable reason for the denial has been stated over and over again. This ruling has been almost unanimous, and while some courts have not been as firm as others, it is believed that no case has yet sustained the right contended for unless something was found in the charter of the corporation which seemed to necessarily except it out of the well-established principle. Notwithstanding the broad concession to corporations of the power to buy and sell personal property, under both general and special charters, it has always been held that neither the right to subscribe for stock in other corporations, nor the right to buy such stock in open market, was intended within the terms of the grant, because, for one reason, public policy was so against the exercise of such a demoralizing right that its existence could not be presumed from such general language.

The general doctrine, therefore stands everywhere that to uphold one corporation in owning and voting the stock of another it must be able to put its finger upon the letter of the statute which says it may do so.

And that a system of corporation law such as this exists is, in itself, a powerful argument against any departure from it. For it has not come from the dark ages of the law, but has risen up right in the midst of living men, part and parcel of the times in which corporations have grown to what they are. It has prevailed through a period of the most strenuous eagerness for every advantage which could be obtained by the manipulators of the modern "high finance." Monopoly and unfair trade have sought, by every argument of the most skilled sophistry, and by every means, to break it down, but the judiciary has stood firm, and an appeal to the legislature is now the last resort.

The legislature has the power to declare what public policy is and when it does it the courts have no alternative but submission, and now a new instance of it is proposed, since our own appellate court has emphatically discountenanced the proposition here made.

A bill for this purpose was introduced at the session of 1903, by request, but it received no consideration. The proposition here presented was then made to this organization at its last meeting, whether merely for the purpose of provoking a discussion, or in order to prepare the way for renewing the effort to change the law, backed by the endorsement of this body, we do not know.

Mere conservatism has no right, of course, to step in here and say: "This thing must not be done, because it has not been done before." We can't have the world's way blocked by any such argument. But we can take counsel whether the new thing offered is good in itself, not only for the hand that offers, but the hand that takes as well. And certainly before we give our assent to such revolutionary legislation we should be profoundly convinced that it will not only be right and expedient, but that it is pressingly necessary to the welfare of the people of the state.

Corporations have nothing to complain of in the past. Beginning with special legislative charters conferring upon named persons the power to associate themselves for limited purposes, we have progressed, as requested, to a system which permits any two or more persons, for a small fee, to create a corporation for any conceivable lawful purpose, or for all conceivable lawful purposes combined. We turn out these concerns bound only by meager rules for the regulation of their own internal affairs, but with no restrictions whatever upon their conduct in relation to the public. They become persons without tangible bodies, and their assets and agencies are frequently as elusive as their books. We tolerate a thousand abuses of the existing system, largely because it has grown so strong that we can no

longer control it. Any proposition to curb its high-handed operations meets a united opposition; regulation is denounced as discrimination against capital. Eight sessions of the legislature have been unable to pass a local banking law through even one house. The twenty-second section of article XII of the constitution, with its mandate that laws shall be passed for the enforcement of the prohibition against monopolies and trusts, even by the forfeiture of charters of incorporated companies, has not been obeyed; and several other provisions of the same article, containing equally mandatory directions, have been treated with like neglect. There was manhood enough in the state in 1889 to declare what should be done upon some of these matters; but there has not been manhood enough since to carry out the declarations.

Again I say, corporations are not in position to complain of any lack of generous treatment; and in view of the apparent helplessness of the public to regulate the powers already granted, it becomes it to scrutinize most carefully any proposition to confer new powers, the exercise of which may breed more, and more dangerous abuses than the old ones.

New Jersey was the pioneer state to adopt the new wide-open policy. Its legislators may be able to congratulate themselves over the outcome of their labors; but certainly the distinction they have conferred upon their state, in the eyes of the business world, is not flattering or enviable. New Jersey has been, from 1896 until now, and it will probably continue to be, the spawning ground of all the trusts and shady promotion schemes evolved in and about the purlieus of Wall Street and the country round. A slight but important difference between the corporation laws of New Jersey and those of other states, and what has attracted the crowd of promoters and speculators thither, is the freedom of those corporations which get their artificial birth in New Jersey to buy and sell the stocks of other corporations. For a fee she sends them out like her hordes of gallinippers to prey upon the business world, working monopoly, confusion and the distress of thousands. Millions of dollars have been contributed to the state treasury, and in this, it must be conceded, the public of that state has benefitted; but capital has not been induced to find employment there, a professional secretary and a sign-board being the only evidence which hundreds of these Jersey-made corporations show of their nativity. The stockholders, the boards of directors and the business are elsewhere.

So it is not worth while for us to expect enlarged investment or enterprise to follow such a law. Nor can the fee business be a source of profit much longer. The legislatures of other localities have already taken up

the idea, probably being enviously moved thereto by common report of the fat revenues received at Trenton, with the result that they have cheapened the operation and ruined the business. A circular sent me last year, says of the Arizona system:

"Expenses of incorporation in Arizona, aside from fees for legal advice, will not ordinarily exceed fifty dollars. There is no franchise or capital stock fee. Any desired system of stock voting may be adopted. Arizona has no anti-trust laws."

Of course it has not. Anti-trust laws would be almost a contradiction in terms of a stock-owning and voting law.

New Jersey is reaping her reward in one way. Her equity courts, federal and state, are crowded with the most tedious and expensive litigation growing out of the wrangles and confusions necessarily incident to the complicated holdings of her corporations in the stocks of other companies, when, as frequently happens there is a failure and a consequent receivership. In many cases of oppressive control, or attempts thereat, minority stockholders do not always submit quietly, because not even in New Jersey do the courts uphold such stock purchases for purposes of control only. Hence injunctions and counter-injunctions, and the paralysis of business when one of these concerns gets into difficulties.

When we look for reasons for this enlargement of corporate powers they are not apparent. Not even after some years of trial elsewhere can the finger be placed upon this or that public benefit, or advantage to trade, which has sprung from stock owning and voting by corporations. It has sometimes facilitated railroad combinations to good advantage where the object was the consolidation of short lines into long ones; but in ten times the number of instances it has been the means of suppressing competition and the building of new lines, while the private losses due to various phases of the freeze-out game, through wreckings and reorganizations, have caused distress and ruin to minority stockholders.

For more than twenty years California groaned and languished under the oppressions of the Southern Pacific Company, of Kentucky, which leached the revenues of the Central Pacific, diverted its traffic, and nearly destroyed the government's claim for over sixty millions. For a few years the Santa Fe furnished relief, and the whole state, particularly the south, flourished marvelously. But now it is rumored that the Southern Pacific is to "absorb" the Santa Fe, which means that another "Northern Securities" deal is to be put through, in some form, and perhaps safely and lawfully, because the Southern Pacific and the Santa Fe are not parallel or com-

peting railroads within the meaning of the interstate commerce law. Yet, if they do combine, (and they cannot do that to practical effect without this stock-owning and voting power) they can bottle up California again, and return its people to the time when "all the traffic would bear" was the established freight rate of the Southern Pacific Company.

On the other hand, the Northern Pacific Company, hampered by the meager language of its congressional charter, had no power to build branch lines, and branch lines were absolutely necessary to its usefulness in the West. It built the branch lines through dummy corporations, which it organized, and whose stock it held. In such instances no injury was done, and the public was benefitted, though the company had no more power to own or vote the stock of the dummy corporations than it had to build the branch lines. It could have accomplished the same result by asking congress to enlarge its powers to the required extent.

But the same story could not be told when the Seattle, Lake Shore & Eastern was seized by the Northern Pacific. It bought up a majority of the stock, put in its clerks as directors, made an operating agreement with itself good for forty years, realized 12½ per cent a year on all the money it had invested out of traffic which originated on the Lake Shore Line, and in a few years had the minority looking in the face of a \$900,000 deficiency.

Earle vs. Seattle, L. S. & E. Ry. Co., 56 Fed. 909.

Needless to say that the competing railroad was not built.

It is said that this is an age of large affairs, and great combinations of capital, and that the world's business cannot be adequately done without the facilities for combination, of which the power of one corporation to own and vote the stock of another is the chief one.

I admit that where a combination is desired by one party and is objected to by the other the scheme in question is most desirable and sometimes absolutely necessary; but I do not admit that any facility is now lacking for the most extensive fair combination.

I also admit that if it is desirable to destroy the old doctrine that supply and demand rule prices and ought to rule them, or the other one, that fair competition is the life of trade, or if we would negative the fact that the best manhood and citizenship are to be found where individuals have the best chance, then this kind of combination has a claim to consideration; but I cannot admit the one without the other. The world's affairs are large, but they are not yet large enough to demand that one man or set of men shall be, for that reason, qualified by law to force themselves against

consent into the affairs of another man or set of men and control them. Nature furnishes facilities enough for that. Yet this very qualification is at the root of the demand for this new system. The big fish want the right to eat up the little ones or drive them into other waters.

Men who want to combine for any lawful purpose are perfectly free to do so, by general or limited partnerships, by joint stock companies, by organization into corporations, by consolidation of corporations or what not. But so long as there is such a thing as a contract it will not be permitted that one party to it shall be allowed to dictate a change in its terms, whether to the advantage or the disadvantage of the other.

In a partnership two or more agree to venture their money or ability for the common profit. Either their articles or the well-settled rules of law determine the rights and duties of each partner. One of the things always implied is that neither partner shall, in any manner, bring a stranger into the concern, unless with the full consent of the others. Not even the death of a partner is ground for disposing of his interest to a third person with right to continue the business.

A corporation avoids this limited operation by eliminating the personality of the individuals who contribute to the common fund. In a corporation it is money alone that "talks." But every corporation is founded upon an implied agreement between the stockholders themselves, and between them and the corporation, that the money contributed shall be used for the expressed corporate purposes, and that all things shall be done in good faith for the accomplishment of those purposes, which must be lawful in themselves. Upon this guaranty the subscribers contribute their means to the enterprise, and the public buys into and sells out of the stock, while the organization is supposed to go on in the course laid out for it at the start. The one valuable affirmative right a stockholder has is to vote his stock; the whole management of the corporate affairs is lodged with the trustees or directors, and so long as they keep their oaths of office the stockholder is powerless to interfere with their operations. They may be dummies put in office by a majority holder and he cannot object, although he may see his stock depreciating through poor management. It is even possible that rivals in trade or manufacture may buy up enough of the stock of the company to control it, and may then wreck it by such devious ways and covert means that the minority have practically no redress.

And here the other side of this question always attempts to claim a strong argument. They say: You admit that it is possible for individuals who are stockholders of a corporation to become stockholders in, and to

control, any other rival corporation to its injury and destruction, if the operation is carried on with sufficient secrecy; well, why should not the rival corporation itself be allowed to do the same thing? That argument was used for all it would stand in the late Northern Securities case, and it is always put to the front. But because natural persons will steal or commit any other offense is no reason why the state should qualify artificial persons to do the same thing. The wrecking of corporations and the ruin of individuals is not a desirable thing, and is not good business for the state to foster. We do not want monopoly, or oppression in trade, or irresponsibility to law, but the contrary. Therefore the state should lend no hand in this matter. If you knew that you were liable to be held up and robbed, on a dark night, your satisfaction at the prospect would hardly be increased if some one told you that if you escaped the first highwayman there would be another with more experience in such matters and with a better gun, at the next turning.

Because there seems to be a weak place in the ordinary corporation system, which renders the holding of stock in any of them, to that extent dangerous, is no reason for any further weakening of it.

But, it is said, if it were the law that one corporation could hold the stock of another, everybody who subscribed for or bought stock would do so knowing what the chances were; and that is probably true. So, in a thousand ways, people know perfectly well that if they go into certain places they are likely to suffer in some way; but we do not pass laws to facilitate their enticement or to make their injury more certain.

I have conceded that large operations have been facilitated in this way, and that but for the plan now proposed many of them could not have been carried through. To begin with not a single so-called "trust" would have, or could have been formed, without this power, and whatever is evil in the trust system can therefore be laid directly at the door of this kind of stockholding and voting. I have not time to detail the operations; everybody knows what they are. The very last refinement of the business is the "holding corporation," which has no capital at all, and which merely exchanges its own shares for the shares of the other cornered corporations up to a majority, and exercises perpetual control.

Where has been the advantage to the public? To the few organizers, underwriters, and the like, they yielded fabulously while the run of gold-goons was on. But to the mass they brought nothing but an era of high prices, and of driving the private individual farther away from business for himself and into hired service.

Several of these "trusts" have failed, although engaged in staple manufactures, and in times usually spoken of as "good." It is suspected that they became topheavy, and that it is really difficult to find men of sufficient ability to carry them on successfully. When they do fail they prostrate an entire industry; the successful goes down with the unsuccessful. How fared it with the Northern Pacific fishing industry, and what will be left of it after its legal difficulties are ended, if they ever end? What a spectacle to see every iron shipbuilding plant in the United States but two suddenly going into the hands of receivers and the whole business paralyzed, because of a juggle among the promoters of the United States Shipbuilding Company? And whisky proved too much for the master minds which undertook its destiny. The New York stock market has been as dull as ditch water for months attributable to the general tumble of "industrials," led by the United States Steel Corporation whose stock, the day I write, is quoted at 9% for common, and but 56 for preferred.

There have been some successes, however. The great progenitor of all the combinations, the Standard Oil Company, is a success, and is first on the list. It has literally chewed up and digested thousands of men and their fortunes, and hundreds of corporations. How it has done it is no secret now. It has used all the highwayman's arts, but one of the most efficient means it has used has been the stock purchasing scheme. An instance is found in Miss Tarbell's History, in the June number of McClure's Magazine. The Standard Company had had the oil producers of Pennsylvania by the throat for years. It had discriminating transportation agreements with all of the oil railroads, and it owned the only pipe line to the seaboard. The producers and independent refiners organized two companies—the Producers' Oil Company and the United States Pipe Line, the combined objects being to get the oil of the independents to the sea and make a living market in spite of the Standard Company. The first named company, by some accident, was a limited partnership into which stockholders, under the law of Pennsylvania, had to be elected to membership; the other was an ordinary corporation. Years of constant war had been going on to get the pipe-line constructed, the Standard people employing every possible means to kill the enterprise. But the independents had among them some of the best men of the state, who kept the plans and affairs of their companies strictly to themselves. When beaten in one place they appeared at another with a new device. They poured out money, and were making some headway. April 11, 1891, the Producers' Company held a corporate meeting at Warren, at which one Carter, who was the elected owner of 300 shares, ap-

peared and proposed to vote not only his own shares, but 13,013 more. He was not allowed to vote the additional shares because he had not been elected upon them. He had turned traitor to his friends and was there with his 13,013 shares borrowed from the Standard Oil Company, which had picked them up, here and there, from scattering holders, and but for the peculiar form of the organization would have elected Standard men right into the board of the Producers' Company. The Standard went right on buying stock until it had 29,764 shares, a clear majority of the whole issue, and brought suit to compel permission to vote them. But the courts said it could not get in even with that number.

But the annual meeting of the United States Pipe Line was held in August, 1395, and the Standard Company was there again with 2,613 shares of its stock, its representative, J. C. McDowell, offering to vote. Miss Tarbell says: "He was stopped at the door by Mr. Michael Murphy and told emphatically that they considered that he was sent there by the Standard Oil Company to spy on their actions; that legal or illegal they would throw him out if he crossed the threshold. Mr. McDowell discreetly withdrew. Naturally a suit followed, but this time the independents lost. The United States Pipe Line being a corporation was obliged to recognize the Standard interest in the concern, and eventually to allow them a director on its board." It took nine years to get that pipe-line through.

Perhaps you have read the recently reported case of Robotham vs. Prudential Insurance Company, 53 Atlantic, 842. It illustrates the possibilities of the plan here proposed. The prudential Company, with a capital of \$2,000,000 and assets of \$60,000,000, and the Fidelity Trust Company, with a capital of \$3,000,000 and assets of \$14,000,000, were located at Newark, New Jersey. The former had fourteen directors, the latter eighteen. There were ninety-one holders of the Prudential stock. The two boards proposed that each of the corporations should acquire a majority of the stock of the other, and they were about to carry out the scheme. It was intended, it was shown, that the Prudential directors were to arrange to hold its annual meeting first, when, by their holding a majority of the stock they would elect themselves directors again. Seven of them were already upon the board of the Trust Company. Then the annual meeting of the Trust Company would be held, and the directors of the Prudential would control the election of that company. And so on, from year to year, for all time, the control of both companies, with their immense assets, would have been perpetuated in the hands of those directors or their appointed individual successors. No election could make a change, although every

director might part with all of his stock but one share. If you have not read this case you may be surprised that even in New Jersey, it was held at the suit of a minority stockholder, that the scheme could not be proceeded with. But it was only because, in the first place, the statute governing insurance companies restricted them, in their purchases of stocks of other corporations, to "investments," whereas this was intended to be purely a purchase for control; and secondly, because it was ultra vires of the directors to enter into a scheme which would have the effect to perpetuate themselves and their appointed successors in office.

The following was proposed by the defense in that case as a correct statement of a possible situation under New Jersey statutes: One man controls a company of \$10,000,000 capital. He may form a new company with a capital of \$5,100,000 to hold a majority of the stock of the first company. He may then sell all but \$2,600,000 of the stock in company No. 2, and transfer his remaining stock to a third company with a capital of \$2,600,000. He may sell \$1,400,000 of this stock to another of just over half that amount; and so on until the power of the whole chain of corporations is vested in himself while he owns but a few thousand dollars worth of capital stock of the ultimate corporation, the remainder of the \$10,000,000 having been unloaded upon the public. If you reverse the operation, and begin with the man who organizes a corporation with but \$10,000 of capital stock, and suppose him to be a financial Napoleon, you can figure him out as the controller of every corporation that exists, if he is given the power here advocated. That would be in theory only, of course; but the actual power of such a man would be enormous.

Such is the amazing length to which the little beginnings of thoughtless but accommodating legislation can go.

Just after our meeting last year some interesting items appeared in the daily papers. I quote two or three. There have been a good many since.

Detroit, Mich., Sept. 1.—For some time past the American Sugar Refining Company has been gradually purchasing stock in sugar beet factories throughout Michigan, and today it was announced that this company had obtained a controlling interest in the big factories: (Here follow the names of nine of them.) It is also stated that as soon as the beet sugar season is over the management of the factories will be placed under one head. The combined capitalization of the companies absorbed by the sugar refining company is placed at \$6,350,000.

Pittsburg, Sept. 5.—The Pittsburg Gazette says contracts have been signed under the terms of which George I. Whitney, of Whitney, Steven-

son & Co., of this city, undertakes to deliver for cash a controlling interest in the Monongahela River Consolidated Coal and Coke Company to the Pittsburg Coal Company. The transfer of control will be through the purchase for cash of a majority of the capital stock, deliverable in either common or preferred shares or both. The Monongahela Consolidated Company is capitalized at \$40,000,000 and its output last year approximated 8,000,000 tons. A story is current to the effect that the big deal just announced is but the forerunner of one that is gigantic by comparison. It is said the Pennsylvania has secured practical control in the Pittsburg Coal Company and this, with the coal of the river coal combine, through the Pittsburg Coal Company, will give the Pennsylvania Railroad Company control of one-fourth of the total output of bituminous coal in the entire state of Pennsylvania. As a railroad is not by law allowed to operate any coal mines, the holdings will be transferred to the Pittsburg Coal Company, which will operate the property."

This shows not only how a monopoly is created, but how a railroad company can violate the positive law of a state made expressly for the purpose of keeping it out of a business which ought to be among the last to be monopolized.

About the same time this appeared:

Kansas City, Mo., Sept. 1.—Twenty-five stock men from different parts of the western grass country met in the Midland Hotel, in this city today, and arranged to perfect the organization of a packing company to compete with the alleged packers' trust. The new company was named the Independent Packing Company. The company will have a capital of \$5,000,000, and will be incorporated under the laws of Arizona. Of the total capitalization 51 per cent will be so disposed of as to be held in escrow by the board of directors of the company. This will insure stockmen who interest themselves in the plan that the company will always be controlled by stock interests. The rest of the stock will be sold to stockmen if possible, although no purchaser will be barred. The division of the stock as decided upon today was made to prevent any possibility of the alleged packers' trust gaining control of the new independent company.

So, the people who produce stock animals, to protect themselves from the raids of the combine which buys their product, must hide themselves in an Arizona corporation, and must double lock their stock to keep the same combine from forcing itself into their organization.

If these concrete instances of the operations which may take place under the plan of stockholding proposed here do not furnish sufficient argu-

ment against it, at least they furnish facts enough to require the affirmative to show some overwhelming reason why the innovation ought to be inaugurated. It may be said that these are cases of the abuse of the power which ought not to be condemned because it is sometimes abused. But it is rarely ever used at all unless an abuse is intended to be consummated by it. Corporations, except in an occasional case of harmless consolidation which could just as well be accomplished in some other way, do not want to buy the stock of other corporations unless there is some scheme of monopolizing a business, suppressing a rival, or fixing prices on foot. You never hear of such a transaction unless it is accompanied by the announcement that the purchasing corporation has secured control of the other. If an attempt at control fails there is a quick selling out and abandonment of the field. A corporation has no use for minority stock in another corporation. It stands for rule, it may stand for ruin, but it never cares to play a minority part.

One of the safeguards of the National Bank system is that a national bank cannot loan money upon or buy its own stock. But the law says nothing about the stocks of other corporations. Once or twice state courts have held that such banks might become so obligated by their holdings of other corporation stocks that they would be liable as other stockholders, under statutory provisions. The United States Supreme Court, however, under the general doctrine that one corporation ought not to hold the stock of another, went farther than many of the state courts and held that the contract by which a bank became the owner of such stock by purchase was absolutely void.

Bank vs. Kennedy, 167 U. S. 362.

In a subsequent case the court gave some of the reasons for its decisions, as follows:

"One of the evident purposes of this enactment (that three-fourths of the directors must be residents of the state) is to confine the management of each bank to persons who live in the neighborhood, and who may, for that reason be supposed to know the trustworthiness of those who are to be appointed officers of the bank, and the character and financial ability of those who seek to borrow its money. But if the funds of a bank in New Hampshire, instead of being retained in the custody and management of its directors, are invested in the stock of a bank in Indiana, the policy of this wholesome provision of the statute would be frustrated. The property of the local stockholders, so far as thus invested, would not be managed by directors of their own selection, but by distant and un-

known persons. Another evil that might result, if large and wealthy banks were permitted to buy and hold the capital stock of other banks would be that in that way the banking capital of a community might be concentrated in one concern and business men be deprived of the advantages that attend competition between banks. Such accumulation of capital would be in disregard of the policy of the national banking law, as seen in its numerous provisions regulating the amount of the capital stock, and the methods to be pursued in increasing or reducing it. The smaller banks in such a case, would be in fact, though not in form, branches of the larger one."

Bank vs. Hawkins, 174, U. S. 364.

If you were proposing a bank law to the legislature, would you incorporate in it a provision that would enable one concern to monopolize the banking business of any community, or even the business of many communities?

A few days ago a man high in our profession said to some young men just entering it:

"In all the field of law regulating the relations of the citizens to each other, the proper function of the lawyer is to promote rational progress, to maintain stability against all fads and crude innovations, and at the same time to keep the development of the law moving with equal step abreast of the progress of the age, satisfying the moral sense of the time, and meeting the changing conditions of human life and activity."

I subscribe to that, and I denounce the proposition that corporations be permitted to own and vote the stock of other corporations a fad and a crude innovation, which, in its manifested operation and effects, does not satisfy but rather shocks the moral sense of the time.

T. L. STILES.

RELIEF FOR OUR STATE AND FEDERAL COURTS

Mr. President, and Members of the State Bar Association:

The bar and people of the state of Washington are justly proud of their courts, federal and state, and the high esteem in which they are held is amply justified by the ability, fidelity and integrity which have characterized the administration of justice in this young commonwealth. The learning of our judges and the clear enunciation of principles reflected in their opinions may be most favorably contrasted with that of other states; and we can felicitate ourselves in the satisfying knowledge that the breath of scandal has not polluted our judiciary.

Generally speaking the condition of our courts is most satisfactory. The administration of justice in this state is not attended with any of the harrowing delays which have brought so much reproach upon other states. This fact alone speaks volumes for the industry and conscientiousness of our judges.

Every system yet devised by man is, however, susceptible of improvement, and ours is no exception to the rule.

DIVISION OF FEDERAL DISTRICT.

The first matter to which your attention is invited is the division of the District of Washington.

It is well known to every member of the bar in this state that the volume of litigation in our federal courts is so great as to render imperatively necessary the division of the district. The most casual examination of statistics of the business transacted in the various federal districts will disclose the fact that the amount of work accomplished by Judge Hanford is greater than that of any other federal judge in the United States.

Let me illustrate: The total number of civil and criminal cases, exclusive of bankruptcy cases, terminated during the years 1902 and 1903, respectively, in the following named states, was as follows:

	1902	1903
California (two districts)	458	524
Idaho	61	89
Nevada	55	35
Oregon (one district and one circuit judge)	98	72
Montana	115	58
Washington	519	410

The number of cases disposed of in Washington, as will be seen, was greater than in Idaho, Nevada, Oregon and Montana combined, where there are one circuit and four district judges.

For the year ending June 30, 1902, 322 civil cases were disposed in this district as against 232 for California (where there are two circuit and two district judges), 42 in Idaho, 15 in Nevada, 56 in Oregon and 73 in Montana. In other words, in Washington 322 cases were disposed of by one judge, while all the remaining districts of the ninth circuit, with nine judges, disposed of only 418. The report of the department of justice will show that in the same year more cases were commenced, on the admiralty side of the district court of Washington, than in any other state, save Michigan, New Jersey and New York.

It has been supposed that the circuit judges might relieve the one overworked judge residing in this district, by doing a share of the work, or by calling upon other district judges to help occasionally; but the Ninth Circuit is vast in its territorial boundaries extending from Mexico to the North Pole and from the Missouri river to our Island territory in the middle of the Pacific Ocean, and comprising six states, two regularly organized territories and all of Alaska,—nineteen courts whose judgements are reviewable in the Circuit Court of Appeals. Obviously, the work of the appellate court is enough for the circuit judges. Their burdens cannot be increased without additional hinderance to the determination of causes in the court of last resort. We all know how unsatisfactory it is to try an important case before a visiting judge. His duties will not admit of prolonged absence from his district, and on that account motions for new trials, bills of exceptions and allowance of appeals, which require time after the rendition of verdicts, add much to the delays, expense and vexation of litigation when the judge who must act is obliged to hasten his departure from the district.

Conceding, as we all must, that the district should be divided, I think it is proper that this Association should take action in the matter, and after full discussion, make a recommendation as to the manner in which the division should be made. The question of first importance is, what counties should compose each district? Naturally, in a question of so much importance, radical differences of opinion exist, not only in our congressional delegation, but among the various localities in the state and in the profession. The question of politics has also intruded itself into an issue entirely non-political. The bone of contention thus far has been, shall the state be divided into districts north and south, or east and west.

Each of these plans has its adherents, and bills have been introduced in congress accordingly. The bill advocated by Congressman Jones provided that the state should be divided into two districts, eastern and western, with the Cascade mountains as the dividing line. This bill was referred, in due season, to the committees on the judiciary in both houses. The senate committee recommended that it be indefinitely postponed, while the house committee recommended its passage.

Senator Foster introduced a bill in the senate, which divided the district by a line running east and west, by which Seattle would become the headquarters of the northern division, and Tacoma of the southern. In my opinion, this plan is infinitely the best of all yet proposed and appears the most logical. The judiciary committee of the senate unanimously recommended the passage of this bill, for the reason, among other things, that it apportioned the business of the state in the most equitable manner possible. The senate committee was of the opinion that a line running north and south, dividing the state into an eastern and western division, naturally commends itself as the best one,—geographically considered alone,—but considered with reference to the business of the state, the division should be made so that the great commercial and maritime cities of Tacoma and Seattle will be in different districts.

A little thought will, it seems to me, convince all that this is correct. The following is a summary of the business of the circuit and district courts for the year ending June 30, 1903:

North Division, Seattle:

Number of criminal cases terminated.....	94
Aggregate amount of fines, forfeitures and penalties.....	\$3,001.83
Number civil cases (excepting bankruptcy) terminated.....	168
Aggregate amount of judgments.....	\$125,478.85

Western Division, Tacoma:

Number of cases terminated.....	32
Aggregate amount of fines, forfeitures and penalties.....	\$1,874.10
Number of civil cases (excepting bankruptcy) terminated....	45
Aggregate amount of judgements.....	\$89,624.19

Eastern Division, Spokane:

Number of criminal cases terminated.....	44
Aggregate amount of fines, forfeitures and penalties.....	\$5,950.94
Number of cases (excepting bankruptcy) terminated.....	44
Aggregate amount of judgments.....	5,945.30

Southern Division, Walla Walla:

Number of criminal cases terminated.....	16
Aggregate amount of fines, forfeitures and penalties.....	\$850.00
Number civil cases (except bankruptcy) terminated.....	5
Aggregate amount of judgements.....	

It will therefore appear that had the Jones bill become a law with Seattle and Tacoma in the same district, the business would have apportioned as follows:

	Western Division.	Eastern Division.
Number of days court held.....	130	61
Civil cases terminated.....	213	49
Criminal cases terminated	126	60
Amount of judgments.....	\$215,103.04	\$5,945.30

This is by no means a fair distribution of business, and demonstrates conclusively that the Jones bill should not become a law. The business of the west side will necessarily increase very much more rapidly than that of the eastern portion of the state, and the disparity in the two districts would be constantly augmented.

One argument frequently made in behalf of the eastern and western division is that it would be cheaper to litigants and the government; but this is not entirely true. The expenditure of time and money, for instance, between Walla Walla, Yakima and Tacoma is approximately the same as between those places and Spokane.

There are many other reasons which make the division into northern and southern districts preferable. The character of litigation in each district would run along parallel lines: each would have some admiralty, some mining, some commercial and some agricultural. The experience of each judge so obtained would render him thoroughly qualified to assist the other whenever occasion required.

It is due to the distinguished gentleman who presides over our federal court that every effort possible be made to speedily procure relief for him. The able, conscientious and fearless manner in which he has fulfilled the laborious and exacting duties devolving upon him has excited the love and esteem of a discriminating bar and people, all of whom justly honor him as a jurist of the highest attainments.

THE SUPREME COURT.

The Supreme Court of this state held its first session in the autumn of the year 1889, with a membership of five judges, which number has since remained unchanged with the exception of the interval between March 20.

1901, and October 7, 1902, when the court was composed of seven members, under the provisions of an act of the legislature temporarily increasing to that number in order to relieve the congested condition of the docket.

In the fourteen years since its organization more than 5,000 case have been decided, and opinions filed embracing nearly thirty-five printed volumes averaging more than seven hundred pages each.

The following statement shows the number of cases docketed in the Supreme Court in each of the last eleven years:

From May 20, 1893, to May 20, 1894, cases.....	445
From May 20, 1894, to May 20, 1895, cases.....	459
From May 20, 1895 to May 20, 1896, cases.....	416
From May 20, 1896 to May 20, 1897, cases.....	346
From May 20, 1897, to May 20, 1898, cases.....	371
From May 20, 1898 to May 20, 1899, cases.....	315
From May 20, 1899, to May 20, 1900, cases.....	340
From May 20, 1900, to May 20, 1901, cases.....	299
From May 20, 1901, to May 20, 1902, cases.....	372
From May 20, 1902, to May 20, 1903, cases.....	406
From May 20, 1903, to May 20, 1904, cases.....	512

It is probable that the number of cases filed in the future will be greatly increased rather than diminished. If this be true, more work will devolve upon the court than can possibly be disposed of by five members. Human endurance has a limit, and it is neither fair to the judges, profitable to the state nor just to litigants to over-burden the court with work. Time must be given for reflection and study. Important questions, upon which our future welfare rests, should not be hurriedly passed upon. Hastily considered cases beget harsh criticism and dissatisfaction; but the fault lies with the legislature in not providing for sufficient judges, and not with the members of the bench who in their zeal to expedite business, are embarrassed by lack of time. The law should be administered speedily; delay is unjustifiable and contrary to the spirit of the institutions. The legislature should permanently increase our Supreme Court to seven members.

ELECTION OF JUDGES.

The nomination of judges at a general political convention is inherently bad. If these officers are to be nominated at all it should be done at a convention called for that sole purpose and at a time when no selection is being made for any other political office. The nomination and election of

judicial officers should occur in other years than those in which general elections are held.

The terms of office and salaries of all the judiciary in this state should be doubled. Laymen cannot appreciate what a sacrifice it is for a lawyer enjoying a growing and lucrative practice to accept election to the bench. The tenure of office is uncertain, the will of the people is vacillating. We all know that by the time a judge returns to the bar his practice is gone and his clients have formed new associations and entered into business connections from which it is difficult, if not impossible to release them. He is, therefore, in the position of commencing his professional life anew. We can conceive of no more important, exacting and exalted position than that of judge. He is called upon to decide the rights of liberty and property. No office requires the display of so much learning and so diversified talents: none exacts such intense application, such courage and such rugged honesty. Yet, notwithstanding all these facts, none is so poorly remunerated. In all the realm of political economy, the judiciary receives the least consideration. Those entrusted with the greatest responsibility and the highest powers should be compensated commensurately.

The bench should be made so attractive that it would be the aim and ambition of every member of the profession to attain a seat thereon. This can best be done by enlarging the term of office and increasing the salary. Of course the ideal method is that prescribed by the federal constitution and for that, if for no other reason, the framers of that great instrument are intitled to the plaudits and everlasting gratitude of our people. That provision constitutes a great and enduring monument to their wisdom and discernment.

All will agree that our present system should be changed and our judiciary taken entirely out of politics. Each member of this Association should, to the utmost of his ability, seek to create a sentiment in the public mind to a change. While probably we cannot hope to bring the public mind to the idea of life tenure, we can, by advocating it, raise the general tone, resulting in a more advanced position than that now occupied. In time by proper effort the desired result will be accomplished and each member of this Association should be a factor in its attainment.

THE JURY.

The act of the legislature of 1903 requiring the previous deposit of a fee of \$12 in actions which either party desires triable before a jury, finds hearty approval as a measure of relief to our Superior Court. I believe

that the theory of that law should be extended to the end that fewer cases be submitted to the arbitrament of juries. The present jury system is not deserving of all the encomiums bestowed upon it. Exact justice would be better accomplished by the submission of complicated facts to the decision of minds trained to weigh, remember and discriminate. In the ages gone by this system performed the greatest service to man in his strife to protect his property and maintain his rights and liberty. Advancing civilization has produced entirely different conditions and surroundings, and many of the reasons which made juries the only safeguard no longer obtain.

I do not wish to be understood as advocating the entire abolition of the jury, but do believe that in many cases its services may be dispensed with to the profit of the state and without jeopardizing the rights of the citizen. The only available way to secure this result is by laws similar to the one of 1903.

The committee on judicial administration and remedial procedure recommends that instructions be prepared by counsel, submitted to the court before argument and copy be furnished to the jury. In addition to this it would appear advantageous to furnish the jury with a daily transcript of the evidence in cases of great importance and unusual length.

OFFICIAL STENOGRAPHERS.

Washington is one of the very few states which has no statutory provision for official stenographers in its trial courts. There are many reasons why a law should be enacted authorizing each judge of the Superior Court to appoint a competent stenographer to report all cases tried. All of the Western States have such laws and they receive the universal approval of the bar. Such a provision would be of inestimable benefit to our trial judges. Many an equity case must be decided by the trial judge upon his recollection of the testimony and without the opportunity to read over the testimony produced. In this respect he labors under a great disadvantage which does not fall upon the judges of the appellate courts where all the testimony is preserved in the statement of facts. I do not believe that any equity judge should be called upon to decide a case of great importance upon conflicting testimony unless he has before him a transcript of the evidence. We all know that as a general rule each party to a law suit anticipates victory and therefore is unwilling to incur the expense of a transcript of a stenographer's notes unless required to do so on appeal. If we had official stenographers, the judges might refresh their recollection

of the testimony without expense to any one by having the stenographer read his notes.

INFERIOR COURTS.

The creation of an inferior court which might be denominated the county court with jurisdiction of probate proceedings and in civil cases under \$1,000 would tend to relieve our Superior Courts of a great volume of petty business which now engrosses the major part of their time. If appeals from this county court could only be taken to our Superior Courts it would greatly diminish the overburdened calendar of our Supreme Court and would prove most beneficial.

I am not vain enough to suppose that this paper contains any new ideas. If it transpires that any of the thoughts herein expressed, meeting with the approbation of this Association, shall receive its active championship, and the public weal be thereby promoted, its purpose will have been subserved.

E. C. MACDONALD.

THE DESIRABILITY OF HARMONIZING STATE AND FEDERAL STATUTES ON IRRIGATION.

In a jurisdiction like the state of Washington, where the fundamental fact of life and business in one section is commerce of the sea or manufacturing, and in an other section mining, and in an other agriculture, and yet in another agriculture by irrigation, the practice of our profession in the several localities is in a degree confined to the branches of law controlling the main lines of business life, and I have feared that the discussion of the subject assigned for this paper might challenge the interest of only a few members of this association.

However, the subject of irrigation, whether viewed as one of direct local interest, or contemplated as a great industrial field, or studied by those concerned in the practical and legal bearing of the laws controlling its use, is deserving of thoughtful and serious consideration.

In the valleys of the Yakima river alone, in this state, 125,000 to 150,000 acres of land are now irrigated and under cultivation. This land has a value at from \$50 to \$300 per acre, a value of about \$12,500,000 to \$15,000,000, without considering the sums invested in trade, business, buildings, roads, and towns, all of which are dependent for value or existence upon the irrigation of these lands, and as yet only the lands that can be most cheaply irrigated are under cultivation.

In by far the greater part of sixteen states and territories within the United States successful agriculture is not possible without irrigation. It is stated upon the authority of the department of agriculture, that an approximate division of the humid and arid portions of the United States places them at the ratio of about 60 to 40. In the greater part of the vast arid regions, the value of the products of the farm exceed the value of the factory, mine and mill. The cheap and abundant food supply provided by irrigated acres supports a large population, and makes possible the existence of large industrial enterprises by supplying the markets on the one hand, and by furnishing a market for other products on the other hand. Throughout the entire arid regions, irrigation is the basis of all civilized life.

Experience has demonstrated that a controlled water supply is superior to rainfall in the successful sustenance of a dense population from the

fruits of the soil. While the kingdoms and empires of antiquity which flourished along the banks of the Nile, and of the Tigris and Euphrates, are dwarfed in size of territory when compared with the kingdoms and empires of later or modern times, yet, in brilliancy of achievement, compactness of national life, and in political concentration, they have never been equalled by the more diffuse empires of modern times. The wonderful results obtained by the irrigation of the sands of the Nile and the lowlands of western and southern Asia, find a still existing example in the teeming population of China which could not be supported if dependence were placed on the rain alone to nourish the necessary crops. So much for the importance of the subject.

Systems of business and species of property invariably draw to and evolve for themselves certain customs and rules for the operation and regulation of the one, and for the number of acquiring, holding and disposing of the other. By long usage and general consent, these rules and customs crystalize into and are given the effect of law; they are determined, interpreted, and receive the sanction of courts; and finally, they are strengthened and amplified, or modified and interdicted, by statute law. Such customs, and statutes in aid and recognition of them, under our system of government, must never be to the disturbance of vested rights or run counter to any constitutional safeguard.

The law of irrigation in the United States had its inception in the local customs existing in that section acquired by cession from Mexico. These customs were founded upon the doctrine of prior appropriation, viz., that he who was first in point of time was first in right. This was the rule under the law of Mexico, where flowing, unappropriated water was regarded in a sense as public property. This doctrine of prior appropriation arose at a time when government and law were not yet established, when there was no considerable agricultural population and there were no riparian owners, and when the streams were put to no use except for mining and for some desultory farming. When the cession was made by Mexico to the United States the title to all of the land included within its limits passed to the government and it was treated as possessing largely the character of a common. The United States for a long time confirmed none of the titles under former grants, and made no grants to its citizens, and he who took possession of a parcel of mining ground or a definite quantity of water was regarded as the rightful owner while he retained possession. It became the settled custom that the right to a definite quantity of water to be diverted from the lakes and flowing streams could be acquired by prior appropria-

tion. This custom was extended to farming and other beneficial purposes; it acquired strength, rights were gained under it, and investments were made, and it was approved, enforced, and molded by the courts, and received the sanction of local legislation; and constituted the law governing property in water on the public lands. It was born of necessity, and grew under conditions, natural and political, favorable to its continued existence. When congress undertook to provide for the granting of title, it was found that large improvements had been made and money had been expended upon the faith of the continuance of these customs and conditions, and therefore provisions was made for the confirmation of the titles which had their origin under the custom rule of the settlers. In this way the rule of appropriation became established throughout the Pacific States, and ran to all of the mining districts of the country, and to all of the arid and semi-arid regions of the west. This rule is now confined in Washington, California, and Oregon, by judicial decisions, to the public lands, and the common law rule obtains as to water on private lands; while in all of the other states and territories in the arid and semi-arid regions, except Nebraska and east of the 97th meridian in Kansas, the rule of prior appropriation is given general application either by judicial decision or by legislative enactment and constitutional provision.

It is worthy of remark that congress only extended the right of appropriation of waters upon the public lands to those localities in which the right to appropriate had been recognized by local law or custom, so that at first the right of appropriation was made to depend upon proof of such custom. That fact is of very little importance at the present because the states in the arid and semi-arid districts, including our own state, have declared either by statute or constitution that the right to the use of water may be acquired by appropriation, and that as between appropriations the first in time is the first in right. Such in outline has been the birth and growth and such in substance is the present condition of the law touching the question of irrigation throughout the irrigated portions of the United States. A consideration of the particular constitutions, legislative acts, and rules of decisions in the several states would not be pertinent to this subject.

It will be seen at a glance, when we reflect that in most of the western states there remain large bodies of public lands and a large amount of water unappropriated, and that the great works for the purposes of irrigation are yet to be inaugurated, and that private-vested interests are every day becoming greater and more complex, that it is a matter of high-

ste importance that the laws of the general government and state legislation should be in complete harmony and the whole system of irrigation and the modes of acquiring water rights should be molded into a harmonious whole so that the act of one should not conflict with but rather supplement the act of the other. Up to the present time, and limiting the statement to the legislation of this state, there is no conflict or lack of harmony between federal and state legislation. So far as the state is concerned our statute books are marked by a lack and absence of legislation rather than by an effort to adopt a definite system. The system of irrigation in this state is regulated by the decisions of the courts rather than by legislation. The general government, within its sphere, has given more intelligent recognition of the necessities of the subject than the state.

The federal statutes affecting the question of irrigation are few in number, and were intended to be in recognition of existing conditions rather than constructive in character. The first act of congress, namely, the act of July 28, 1866, was to the effect that the United States, as the primary proprietor of public lands and waters, recognized and acknowledged the rights to the use of water which had become vested by appropriation in accordance with local laws and custom.

Again, by the act known as the "Cary Act," which gave to each state the power to control 1,000,000 acres of land during its reclamation, has resulted in much good in the states that accepted the benefit of its provisions. In Wyoming about 100,000 acres and in Idaho about 400,000 acres have been reclaimed and disposed of to actual settlers, which never could have been accomplished under the public land acts. Our state passed an act accepting the conditions of the "Cary Act," but for some reason nothing was ever accomplished under it. On July 17, 1902, congress passed an act familiarly known as the "Reclamation Act," which is of present great interest, and which will be noticed again.

The act of congress in providing for and establishing forest reserves at the sources of any of our streams and rivers will result in the highest good in the future preservation of the water supply.

Aside from the several acts mentioned, nothing else of interest has ever been attempted by federal legislation. On the other hand, the state, with the exception of the recognition of the doctrine of prior appropriation of the public waters on public lands, has done nothing of any vital importance.

Irrigation has been carried on longer and more extensively in the territory embraced in the counties of Yakima and Kittitas than in any other

section of the state. In the year 1873, in recognition of the custom prevailing in Yakima county, (the county of Kittitas then forming a part of Yakima county) the territorial legislature passed an act which provided in effect that the holder of title or possessory right to any agricultural lands within the limits of that county should be entitled to the use and enjoyment of the waters of the streams in said county for the purposes of irrigation to the full extent of the soil thereof, and that in all controversies respecting the right to water the same should be determined by the dates of appropriation as respectively made by the parties. This was confidently believed to be and was considered by the lawyers of that district to be a recognition of the existing local custom, and also as being in derogation of the common law rule of riparian rights, if the common law rule was or ever could be applicable in that central portion of the state. In *Benton vs. Johncox*, 17 Wash., 277, it was held that the doctrine of appropriation applied only to public lands, and that this act did not affect rights which had attached prior to its passage, and that the law of riparian rights always existed in this state except where rights by appropriation had become vested before title passed from the government.

By the act approved March 4, 1890, the state legislature made an attempt to provide for and regulate the use of water for the purposes of irrigation. This act undertook to define the rights to the use of water, to provide for rights-of-way for ditches, for the condemnation of riparian rights, for adjudication of priorities of rights, and for the regulation of the distribution of the water of any stream. This act is now useless legislative lumber. The great majority of its provisions were unconstitutional, and otherwise impossible of application or enforcement, and, by common consent, the act has been considered inefficient, inoperative, and unconstitutional so far as its main objects were concerned. Two of its provisions probably are operative; namely, the first section, by which any person is declared to be entitled to appropriate from any of the natural streams or lakes water for the purposes of irrigation, subject to all prior appropriations and to rights existing at the time of the adoption of the constitution; and section two, which provides that the holder of title or of the possessory right to any land which is on the banks of any natural stream shall be entitled to the use of the water of any such stream for the purposes of irrigation to the full extent of the soil for agricultural purposes. It is difficult to understand the purpose and intent of this second section unless it was an attempt to limit the common law rights of riparian owners to the use of sufficient water to irrigate their lands, and permit the remain-

der of the waters of said stream to remain open and subject to appropriation. So far as I know no case has ever arisen in which it was attempted to set up this statute either in enlargement of or in limitation of any right.

By act approved March 9, 1891, the legislature made the doctrine of appropriation applicable in this state, by enacting that the right to the use of water in any lake, pond or flowing spring, or the right to the use of water flowing in any river or stream, for irrigation, mining, or manufacturing purposes, or for supplying cities, towns, and villages with water, might be acquired by appropriation, and as between appropriations the first in time was to be the first in right. Since the passage of that act there has been no uncertainty as to the rule of appropriation as to water on public lands, and subsequent to the passage of that act our supreme court in *Isaacs vs. Barber*, 10 Wash., 124, held that the right of prior appropriation existed as a part of the laws and customs of that portion of the state lying east of the Cascade mountains, and that such custom was so universal that the courts must take judicial notice thereof. That act of 1891 could not prevent the attaching of common law riparian rights, even under a grant taken since its passage, for the reason that it only undertakes to provide for the vesting of title in the use of water by appropriation and does not change the law of property in riparian rights.

The three acts of this state above mentioned are all that affect the question of title or right to the use of waters in this state.

There is nothing in any of them that is out of harmony with the federal statutes, but the rule of judicial decision in this state makes it impossible for the state to fully realize upon and accept the benefits conferred by national grace. When the federal government by the act of 1866 provided that all sales should be subject to the existing rights of appropriators, there was an implied recognition of the rule of riparian ownership as being in force, and when once the title of a riparian owner attached it could not afterwards be destroyed by legislation. The only way in which this reasoning can be avoided is by holding that the common law rule was not in force, and never had an existence in the state or territory. Such a rule of decision was adopted in some of the states; and, in others, by early legislative act or constitutional provision, it was provided that the rule of prior appropriation and not that of riparian rights should apply. As a matter of just and enlightened public policy the doctrine of prior appropriation should apply in all of the arid regions of the west, and the insignificant benefits arising to a few riparian owners ought not to stand in the way of the commanding and paramount interests of the public as a whole.

As the law now stands in this state, it is the same as at the common law, except as to appropriations which have become vested prior to the government parting with its title to the riparian lands. Under the rule of decision in this state, it is absolutely impossible to change the existing order of things either by constitutional amendment or by legislative act, so far as it affects riparian rights already acquired. The law should never be impotent to further the advancement of civilization and to foster and protect all needed plans for improvement, when it can do so without injury to individual rights or the destruction of fundamental principles. To place our state upon a plane where it can receive the gifts proposed by the general government, and where it can realize to the fullest extent the wonderful riches of its soil and water, prompt and efficient legislation is necessary. In my judgment the legislature should promptly and unequivocally declare that all unappropriated water of the state belongs to the public and shall be subject to appropriation for irrigation and other beneficial uses, and that all titles subsequently acquired from the government shall be held and taken subject to that rule. In addition to such legislation, an act should be passed providing for the condemnation of existing rights. It is undoubted that the reclamation of desert tracts is a public purpose for which the power of eminent domain may be exercised, and an act providing an efficient and legal method of condemnation is all that will be necessary to wipe out gradually the interests of riparian owners, as from time to time such interests stand in the way of large and needed enterprises. The necessity for some such legislation as this is made apparent in the situation which now confronts the people of this state.

By act of congress, approved July 17, 1902, familiarly known as the "Reclamation Act," provision was made to give government aid to the reclaiming of arid lands in sixteen states and territories, including Washington. The salient features of this act are as follows: All moneys collected from the sale of public lands, in excess of fees and commissions, and five per cent appropriated for educational purposes, are set aside as a fund to be known as the "Reclamation Fund," and are to be used in the examination and survey for and construction of irrigation works for the reclamation of arid lands; the secretary of the interior shall determine what irrigation projects are feasible and practicable, shall direct the construction of the works, shall withdraw from public entry lands required for such works, and then permit them to be entered only under homestead law in tracts of not less than 40 acres, or more than 160 acres, and shall provide for the control and distribution of the water used through such system of works;

and the major portion of the funds realized from the sale of lands within such state, except that the secretary may when he deems it advisable temporarily use such portion of the funds in any other state, the excess to be restored as soon as practicable. In September, 1903, the fund collected from sale of lands in this state amounted to about \$2,000,000, and according to the rate of sale should now contain about \$3,000,000. It is not difficult to conceive of the large scale upon which irrigation projects can be conducted with such princely revenues at hand.

But, before the government will inaugurate its great plans, and before it can make use of these funds, the status of the state laws must be such that the provisions of this act will be in conformity with them. Section 8 of the act provides that nothing in that act shall affect or in any manner interfere with such laws. The question at once arose, is the body of our state law in such a condition that the government may proceed to expend the funds credited to this state? Manifestly, the government will not proceed until it can control the water which is to supply the works, and that control can only be obtained through state legislation. If no field can be found in this state, the secretary can use the funds in some other state, and they will be lost to us indefinitely. To the end that the state might act intelligently, the governor has appointed a commission to study the conditions, and report and advise as to the necessary legislation. The eminent gentlemen comprising that commission are now engaged in their work, but have not progressed to the point of any report. A hasty examination of the matter will convince any one that liberal and comprehensive action is necessary.

As private rights by riparian ownership and appropriations have attached to all the considerable sources of water supply, provision must be made for the condemnation of the one, and supplying the appropriations of the other, and in doing this many complex and perplexing conditions will be encountered. Further, provisions should be made enabling the government to acquire lands lying along and under the streams and lakes, whether private or state land, to be used for reservoirs and other works, and methods should be provided for the organization of districts or associations for the purpose of economically distributing the water conveyed and held by the government works. And finally, it should be enacted that the water acquired under this act should be appurtenant to the land irrigated, and that "beneficial use shall be the basis, the measure, and the limit of the right," as stipulated by the act itself.

There is one more subject, that of storage of water, which may be

properly noted here. In the early settlements of the country the water supply was fairly abundant, and private effort and small capital were sufficient to meet all demands. By these means all the waters of small streams were taken and all small projects carried out, and no thought of failure of supply or artificial storage was ever indulged. Those were days of small things; but now large capital or national aid is necessary to further extend the irrigated area. A tub was large enough for Diogenes, but a world was too little for Alexander. In the times of modest requirements there was no clashing, but in these days of ambitious designs and plans to subdue to cultivation great expanses of country, there must be public control and regulation. The great factor in the irrigation of the future will be the storage supply. Where the water is empounded in artificial works in aid of some single enterprise the problem is not difficult; but where use is made of natural depressions, streams, and lakes, the conditions differ. A river takes its source in a lake or system of lakes. A half a hundred canals divert water from this river, some of them having their appropriations based upon the natural flow, and others obtaining their supply from stored water in the lake or lakes, and the river being used to conduct this stored water down to the canals. The problem is for each person to get the water to which he is entitled down to his canal. The further problem is to regulate the right of storing water, and to fix some method for acquiring, holding and using reservoir rights. There can be but one solution to the question, and that is to place the matter under state control and regulation. The use of water is a public use both because of and without the constitutional declaration, and the state should exercise its power to regulate the distribution of the waters of the state, so that an orderly method may be provided in place of the present scramble to obtain unlicensed rights.

By the use of water the sterile plains and sandy deserts of the arid states are converted into fertile gardens of Mesopotamian richness, capable of supporting a teeming population. By these means these states are advanced to the forefront of wealth and importance in the union, the national prosperity and greatness are enhanced, and a multitude of homes furnished to the home loving citizens of the nation. This destiny can be advanced and promoted by our national and state legislatures directing their efforts to the creation of a system of laws suited to the needs of the conditions, and leaving the situation unhampered by law of property which can never be made beneficially applicable to those sections of our country.

CARROLL B. GRAVES.

IN MEMORY OF C. V. WARNER.

(Extract from Eulogy Delivered by Austin Mires.)

Clyde V. Warner was born at Leon, Decatur County, Iowa, February 25, 1866. His father was Joseph S. Warner, a lawyer by profession, who died in active practice, when the subject of this biography was 17 years old. Mr. Warner spent the years of his youth in the home of his birth, and was educated there in the common schools and at Ames College. He graduated from the law department of the University of the State of Iowa in 1888 and was soon thereafter admitted to the bar of his native state. He moved to Ellensburg, Kittitas County, Washington, in the summer of 1889 and there commenced the practice of his chosen profession.

He came to Ellensburg a young man, without experience, without training and without acquaintance, but full of hope and self-reliance. At the time of his death he was only 38 years of age, but he had already won position in the front rank at the bar.

He was a Democrat in politics, in which party he exercised a strong influence. He was elected Prosecuting Attorney for Kittitas County in 1900, and re-elected by an increased majority in 1902. He had filled the respective offices of school director and city councilman several terms and was president of the Board of Trustees of the State Normal School at Ellensburg, at the time of his death.

He possessed an unusual faculty for making acquaintances and friends. He never harbored resentment for a wrong, was void of envy and none ever knew him well who were not his friends.

He became a member of the Washington State Bar Association at its annual meeting, held at Seattle in the year 1897, and from that time took a deep and active interest in its work.

On Saturday evening, February 20, 1904, at the close of a busy week, and when the day's work was done, Clyde V. Warner was taken sick and retired to his bed, from whence he never arose. He underwent an operation for appendicitis on February 23. He suffered until the eleventh day of March, 1904, when at the hour of 6:35 p. m. he died. And thus at the age of 38 years, in the noon-tide of a busy and useful life he was stricken down.

He pandered not to service, form or creed of church, but of all men I ever knew he was the chief Samaritan.. Could he have known the hearts of those he left behind, could he have seen the flood of tears by little children shed for him, 'twould have lent a glory to his passing soul sublimer far than any crown that ever graced a king.

He lived an honest, brave and manly life. He died as he had lived. Warner—kind and loyal friend, vail and farewell.

IN MEMORY OF JOHN J. M'GILVRA.

(Extracts from Memorial Address Delivered by Joseph Shippen, Esq.)

John J. McGilvra departed this life in Seattle, at his home on the shore of Lake Washington, on the 19th day of December, 1903. His father, John McGilvra, of Highland Scotch ancestry, was married to Mary Grant, resided in Livingston County, N. Y., where their son, John J., was born July 11, 1827. The family removed in 1838 to Elgin, Ill., where the lad continued his education in the public schools, and thereafter studied law. At the age of 26 he was admitted to the bar in Chicago, where he engaged in an active practice of his profession. President Lincoln appointed him United States attorney for the territory of Washington in June, 1861. For four years next thereafter, he filled his responsible position with rigorous faithfulness and honor, achieving meanwhile a reputation that drew to him a large clientage and extensive practice. Although the population of the territory at the time of his arrival was but 12,000, it grew rapidly, and the duties of his office called him to extensive travel, with no small discomfort, and even hardship. Thus, he was brought into contact and acquaintance with all the active business men, and in conflict with the ablest men at the bar of those early days. Thereby was given him much severe training of memory and reasoning powers as developed in the young advocate the resourceful and positive character devoted to the maintenance of law and order, that distinguished him through life.

From Olympia, Mr. McGilvra removed first to Walla Walla; thence to Vancouver, and finally, in 1864, to Seattle, which remained his permanent abode.

Aside from his United States attorneyship, the only public offices he ever held were membership in the territorial legislature of 1866-7, and for one year the attorneyship for Seattle. In 1876 he was sent as sole committeeman to the national capitol to secure the restoration to the public domain of lands claimed for a branch railroad unbuilt—in which mission he was successful.

Mr. McGilvra was married in Chicago in 1855 to Miss Elizabeth M. Hills, who survives him as his widow; and he leaves a family of three adult children to mourn his loss.

At the time of his death the citizens of Seattle and the organizations with which he was connected, gave public expression to the high esteem in which he was held. The resolutions adopted and addresses made upon his life and character have been preserved in a memorial volume that will be prized not only by his family but by the pioneers and his associates at the bar. The public hope has been expressed that a monumental statue may be erected in Seattle to perpetuate the memory of so able, high-minded and useful a lawyer and citizen.

IN MEMORY OF FRED RICE ROWELL.

(Extracts from Address Delivered by Richard Saxe Jones.)

Fred Rice Rowell was born on the 29th day of December, 1856, at South Thomaston, Knox county, Maine. His great grandfather, William Rowell, removed to Thomaston, Maine, after the Revolutionary war, having participated in the battle of Bunker Hill and in other engagements in the cause of liberty. Fred Rice Rowell obtained his early education in the public schools. Later he graduated from Colby College, Maine, in the class of 1881, and then read law in the office of Hon. A. P. Gould in Thomaston. For five years he practiced law in the state of Maine and then in May, 1888, removed to Seattle, Washington, where he died on the 27th day of April, 1904.

He was an earnest and sincere Christian and one of the vestry of St. Mark's Episcopal church in Seattle, being a member of the Supreme Council of the Brotherhood of St. Andrew.

He was married on the 16th day of January, 1884, to Mary Florence Stetson, a native of South Thomaston, Maine, who survives him.

From the very first day of his arrival in Seattle he began to take a leading place in the city's activities. He was a able lawyer and soon ranked among the best and most conservative men at the bar of King County. He will always be remembered as the conservative lawyer. Fearless as he was, yet he never attacked until he was thoroughly prepared and when he was upon the defensive his opponent knew that every case had been studied and that every argument had been fully weighed.

He was a man of broad general information and of scholarly attainments. His courtesy was unfailing; his integrity above question.

The young man from the East seeking a Western location, who drifted into the office of Fred Rice Rowell, always came away filled with hope and with the thought that at least one member of the bar of King County would always keep his interests before him.

Perhaps no member of the bar in the city of Seattle was so thoroughly beloved; not because he was one who went about seeking friends, nor by any subserviency gained that reward, but solely because of his absolute integrity and continuous courtesy. Conservatism, integrity and courtesy combined to produce absolute confidence, sincere respect and faithful friendship.

The home life of Fred Rice Rowell was singularly beautiful, and he had just completed, but not occupied, one of the handsome homes of the city of Seattle.

Fortunate in financial matters he was able to do much for the good of others and was always willing.

The Bar Association of King County feels that it lost one of its most valuable members when Fred Rice Rowell passed to the Great Beyond.

PAPERS READ.

Year.	Writer.	Subject.
1894....	John Arthur.....	President's Address—"Lawyers in Their Relations With the State."
"	R. A. Ballinger.....	"Our Community Property Laws."
"	Frank H. Graves.....	"Non-Partisan Selection of the Judiciary."
"	Thomas Carroll.....	"Policy of Redemption Laws."
"	John W. Pratt.....	"Government of Cities."
"	Charles S. Fogg.....	"Evils of the Promiscuous Appointment of Receivers."
"	James B. Reavis.....	"Our Exemption Laws."
"	Frank T. Post.....	"The Material Man's Lien."
"	Orange Jacobs.....	"Reminiscences of the Bench and Bar of Washington."
1895....	George M. Forster.....	President's Address.
"	George Turner.....	"Practice and Procedure in the State of Washington."
"	Charles O. Bates.....	"Juries and Jury Trials."
"	David E. Bailly.....	"Stare Decisis."
"	C. H. Hanford.....	"Jurisdiction of American Courts, State and Federal."
"	John J. McGilvra.....	"The Pioneer Judges and Lawyers of Washington."
1896....	Charles S. Fogg.....	President's Address—"The Law and Lawyer in History."
"	T. N. Allen.....	"Judicial Legislation."
"	N. T. Caton.....	"Pioneer Judges and Lawyers."
"	Emmett N. Parker.....	"Probate Law and Practice in Washington."
"	George Donworth.....	"Corporations."
"	R. S. Holt.....	"Contributory Negligence."
"	James Z. Moore.....	"Landlord and Tenant."
"	Alfred Battle.....	"Record Notice and Curative Acts."
"	W. T. Dovell.....	"Bench and Bar."
1897....	Harold Preston.....	President's Address.
"	E. B. Leaming.....	"Philosophy of the Law."
"	W. H. Pritchard.....	"The Policy and Practical effect of Usury Laws."
"	Ben Sheeks.....	"Some Judicial Opinions—A Study."

Year.	Writer.	Subject.
1897....	Austin Mires.....	Irrigation and Water Rights in the State of Washington."
"	....John P. Hoyt.....	Reminiscences of the Bench and Bar of Washington
1898....	George Turner.....	President's Address.
"	....W. C. Sharpstein.....	Annexation of Foreign Territory; Its Constitutionality and Expediency."
"	....F. H. Brownell.....	"Mining Laws in Washington."
"	....James Wickersham.....	"The Constitution of China—A Study in Primitive Law."
"	....Henry M. Hoyt.....	"The Legal Effects of Mortgages and Pledges of Rents and Profits of Real Estate."
"	....Frederick Bausman.....	"Public Policy as an Element of Judicial Construction."
1899....	Theodore L. Stiles.....	President's Address—"Legislative Encroachments Upon Private Right."
"	....James G. McClinton.....	"Reform in Criminal Procedure."
"	....Byron L. Lile.....	"Fourteenth Amendment to the United States Constitution."
"	....George H. Walker.....	"What Shall Be Done About the Trusts?"
"	....E. F. Blaine.....	"Decennial of Our State Constitution."
"	....Samuel R. Stern.....	"The Law and the Laborer."
1900....	George Donworth.....	President's Address—"The Passing of Precedent."
"	....Will H. Thompson.....	"The Status of Our Newly-Acquired Territory."
"	....Herbert S. Griggs.....	"Admiralty Practice."
"	....Charles E. Shepard.....	"Limitations on Municipal Indebtedness."
"	....C. W. Hodgdon.....	"Government Ownership of Railroads."
"	....J. B. Davidson.....	"Needed Reforms in the Laws of Marriage and Divorce."
"	....Thomas B. Hardin.....	"How Should United States Senators Be Elected?"
1901....	Samuel R. Stern.....	President's Address.
"	....A. G. Kellam.....	"The Trust Fund Theory of Corporation Assets."
"	....T. O. Abbott.....	"Advantages of the Torrens System of Conveyancing."
"	....E. G. Kreider.....	"Law Reporting."
"	....Joseph Shippen.....	"The Insular Questions and their Solution by the Supreme Court of the United States."

Year.	Writer.	Subject.
1902....	Austin Mires.....	President's Address.
"	....Edward Whitson.....	"The Course of Legislation in Washington."
"	....Will G. Graves.....	"Stability of Legal Principles—A Thing of the Past."
"	....Arthur Remington.....	"Railway and Transportation Commissions."
"	....C. H. Hanford.....	"Conflicting Decisions of Federal and State Courts."
"	....Orange Jacobs.....	"Reminiscences of Bench and Bar."
"	....Edward Pruyn.....	Poem—"A Day in Court."
1903....	R. G. Hudson.....	President's Address—"Trusts."
"	....F. D. Nash.....	"Street Assessments."
"	....N. T. Caton.....	"Some Pioneer Judges and Lawyers I Have Known."
"	....L. Frank Brown.....	"The Use and Abuse of the Labor Union."
"	....Thomas Burke.....	"The Life and Character of John B. Allen."
"	....John T. Condon.....	"A Theory of Legal Obligation."
"	....James B. Reavis.....	"Taxation of Franchises."
1904....	W. G. Peters.....	President's Address.
"	....Carrol B. Graves.....	"The Desirability of Harmonizing State and Federal Statutes on Irrigation."
"	....E. C. Macdonald.....	"Relief for Our State and Federal Courts."
"	....Alfred Battle.....	For Affirmative of "Should the State Permit Corporations to Own and Vote Stock in Other Corporations?"
"Theo. L. Stiles.....	For Negative of—"Should the State Permit Corporations to Own and Vote Stock in Other Corporations?"

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PROCEEDINGS

OF THE

Washington State Bar Association

SEVENTEENTH ANNUAL SESSION

Held at the City of Spokane July 6th, 7th and 8th, 1905.

**OLYMPIA, WASH.
BLANKENSHIP-SATTERLEE CO.
1905**

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**The Eighteenth Annual Session
of the
Washington State Bar Association
will be held in the
City of Everett July 12th, and 13th 14th, 1906.**

The program has been arranged as follows:

President's Address.....F. H. Brownell, Everett
The Court's Work.....Hon. Frank H. Rudkin, Olympia
Some Questions of Real Estate Law.....
.....Mr. Geo. E. Wright, Seattle
The Evolution of Legislative Methods.....
.....Mr. Henry McLean, Mount Vernon
Some Questions of Maritime Law.....
.....Hon. James M. Ashton, Tacoma
Master and Servant.....Hon. J. B. Bridges, Aberdeen
The Early Bar of Washington.....
.....Hon. R. F. Sturdevant, Dayton
Several Important Committee Reports (See reference this report)

The Everett Bar desires to add some interesting social features to the program, full particulars of which will be sent to members later.

OFFICERS

President	FRANCIS H. BROWNELL, Everett
First Vice President	E. C. HUGHES, Seattle
Second Vice President	R. S. HOLT, Tacoma
Third Vice President	A. G. AVERY, Spokane
Fourth Vice President	C. C. GOSE, Walla Walla
Secretary	C. WILL SHAFFER, Olympia
Treasurer	N. S. PORTER, Olympia

DELEGATES TO AMERICAN BAR ASSOCIATION.

C. H. HANFORD	Seattle
CHARLES E. SHEPARD	Seattle
MILO A. ROOT	Seattle

STANDING COMMITTEES

JURISPRUDENCE AND LAW REFORM

T. D. Rockwell	Spokane
J. H. Easterday	Tacoma
J. E. Frost	Ellensburg
Carroll B. Graves	Seattle
R. A. Ballinger	Seattle

JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE

W. G. Graves	Spokane
Frank T. Post	Spokane
H. A. P. Myers	Davenport
Henry McLean	Mt. Vernon
C. S. Reinhart	Olympia

STANDING COMMITTEES

LEGAL EDUCATION AND ADMISSION TO THE BAR

John T. Condon	.	.	.	.	.	Seattle
L. Frank Brown	.	.	.	.	.	Seattle
F. M. Dewart	.	.	.	.	.	Spokane
P. M. Troy	.	.	.	.	.	Olympia
J. L. Sharpstein	.	.	.	.	.	Walla Walla

UNIFORMITY OF STATE LAWS

C. H. Hanford	.	.	.	.	.	Seattle
Chas. E. Shepard	.	.	.	.	.	Seattle
W. R. Smith	.	.	.	.	.	Seattle
J. E. Horan	.	.	.	.	.	Everett
R. L. McCrosky	.	.	.	.	.	Colfax
F. Campbell	.	.	.	.	.	Tacoma

COMMERCIAL LAW

J. T. Ronald	.	.	.	.	.	Seattle
Ira Bronson	.	.	.	.	.	Seattle
Mark F. Mendenhall	.	.	.	.	.	Spokane
Frank D. Nash	.	.	.	.	.	Tacoma

PUBLICATIONS

Austin Mires	.	.	.	.	.	Ellensburg
Dudley G. Wooten	.	.	.	.	.	Seattle
Arthur Remington	.	.	.	.	.	Olympia
Marshall K. Snell	.	.	.	.	.	Tacoma
Fred Miller	.	.	.	.	.	Spokane

GRIEVANCES

F. M. Dudley	.	.	.	.	.	Spokane
M. J. Gordan	.	.	.	.	.	Spokane
Frank Reeves	.	.	.	.	.	Wenatchee
M. P. Hurd	.	.	.	.	.	Mt. Vernon
A. G. Kellam	.	.	.	.	.	Spokane

OBITUARIES

C. O. Bates	.	.	.	.	.	Tacoma
M. F. Gose	.	.	.	.	.	Pomeroy
E. C. Macdonald	.	.	.	.	.	Spokane
O. P. Brown	.	.	.	.	.	Bellingham
John E. Humphries	.	.	.	.	.	Seattle

STATE BAR ASSOCIATION

5

LEGISLATIVE COMMITTEE

B. F. Grosscup	.	.	.	.	.	Tacoma
Walter Christian	.	.	.	.	.	Tacoma
W. T. Dovell	.	.	.	.	.	Seattle
Irving T. Cole	.	.	.	.	.	Seattle
S. R. Stern	.	.	.	.	.	Spokane

JUDICIARY COMMITTEE

Thos. Burke	.	.	.	.	.	Seattle
Corwin S. Shank	Seattle
John P. Hartman	Seattle
John A. Shackleford	Tacoma
Chas. P. Lund	Spokane

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John W. Roberts	Seattle
R. G. Hudson	Tacoma
W. B. Stratton	Seattle
Wilbra Coleman	Sedro-Woolley

SPECIAL COMMITTEES

JUVENILE COURTS

A. W. Frater	.	.	.	.	.	Seattle
Joseph Shippen	.	.	.	.	.	Seattle
Austin E. Griffiths	.	.	.	.	.	Seattle
S. J. Chadwick	.	.	.	.	.	Colfax
H. L. Kennan	.	.	.	.	.	Spokane

TORRENS SYSTEM OF LAND TRANSFERS

T. O. Abbott	.	.	.	.	.	Seattle
Geo. E. Wright	.	.	.	.	.	Seattle
James B. Howe	.	.	.	.	.	Seattle

ROLL OF MEMBERS.

Abbott, T. O.,	Seattle
Abel, W. H.,	Montesano
Albertson, R. B.,	Seattle
Allen, W. L.,	Spokane
Anderson, A. A.,	Seattle
Atkinson, John D.,	Wenatchee
Arthur, John	Seattle
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Barnhart, Richard M.,	Spokane
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Baxter, Chauncey L.,	Seattle
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Belt, George W.,	Spokane
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Blaine, E. F.,	Seattle
Bowman, A. C.,	Seattle
Brady, Edward	Seattle
Brandt, Emil J.,	Seattle
Brents, Thos. H.,	Walla Walla
Bronson, Ira	Seattle
Brown, Edwin J.,	Seattle
Brown, Frank L.,	Seattle
Brown, O. P.,	Bellingham
Brownell, F. H.,	Everett

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Burke, Thomas	Seattle
Campbell, F.,	Tacoma
Campbell, J. D.,	Spokane
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Carroll, Thomas	Tacoma
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Caton, Nathan T.,	Davenport
Chadwick, S. J.,	Colfax
Christian, Walter	Tacoma
Claypool, C. E.,	Circle City, Alaska
Clementson, Geo. H.,	Port Angeles
Clifford, Miles	Tacoma
Cole, Irving T.,	Seattle
Coleman, A. R.,	Port Townsend
Coleman, Wilbra	Sedro-Woolley
Condon, John T.,	Seattle
Corrigan, John L.,	La Conner
Corliss, C. W.,	Seattle
Cross, J. C.,	Aberdeen
Crow, Herman D.,	Spokane
Davidson, John B.,	Ellensburg
Davis, Peter V.,	Seattle
Dawson, William Sherman	Spokane
Deming, A. W.,	Summit
De Steiguer, George E.,	Seattle
Dewart, F. M.,	Spokane
Doherty, L. A.,	Wallace, Idaho
Donworth, George	Seattle
Dormitzer, P. C.,	Seattle
Douglas, G. F.,	Seattle
Douglas, S.,	Colville
Doval, W. T.,	Seattle
Drain, James A.,	Olympia
Dudley, F. M.,	Spokane

Edsen, Eduard P.,	.	.	.	.	Seattle
Emmons, R. W.,	.	.	.	.	Seattle
Fogg, Charles S.,	.	.	.	.	Tacoma
Fogg, George W.,	.	.	.	.	Tacoma
Follmer, Elmer S.,	.	.	.	.	Seattle
Frater, A. W.,	.	.	.	.	Seattle
Fullerton, Mark A.,	.	.	.	.	Colfax
Gay, Wilson, R.,	.	.	.	.	Seattle
Gilbert, W. S.	.	.	.	.	Spokane
Gilliam, Mitchell	.	.	.	.	Seattle
Glass, Chester	.	.	.	.	Spokane
Gleason, Chas. S.,	.	.	.	.	Seattle
Gordon, Merritt J.,	.	.	.	.	Spokane
Gose, C. C.,	.	.	.	.	Walla Walla
Gose, M. F.,	.	.	.	.	Pomeroy
Gowan, Richard	.	.	.	.	Seattle
Graves, Carroll B.,	.	.	.	.	Ellensburg
Graves, W. G.,	.	.	.	.	Spokane
Greene, Roger S.,	.	.	.	.	Seattle
Griffin, C. E.,	.	.	.	.	Tacoma
Griffiths, Austin E.,	.	.	.	.	Seattle
Griggs, Herbert S.,	.	.	.	.	Tacoma
Grosscup, B. S.,	.	.	.	.	Tacoma
Guerin, Reynolds F.,	.	.	.	.	Seattle
Guie, E. H.,	.	.	.	.	Seattle
Hadley, Hiram E.,	.	.	.	.	Olympia
Hanford, C. H.,	.	.	.	.	Seattle
Happy, Cyrus	.	.	.	.	Spokane
Hardin, Thomas B.,	.	.	.	.	Seattle
Harris, James M.,	.	.	.	.	Tacoma
Harris, W. H.,	.	.	.	.	Tacoma
Hart, John B.,	.	.	.	.	Seattle
Hartman, John P., jr.,	.	.	.	.	Seattle
Hartson, Millard T.,	.	.	.	.	Spokane
Hastings, H. H. A.,	.	.	.	.	Seattle

Hess, John B.,	.	.	.	Spokane
Heuston, B. F.,	.	.	.	Tacoma
Heyburn, W. B.,	.	.	.	Wallace, Idaho
Heyburn, E. M.,	.	.	.	Spokane
Higgins, Thomas B.,	.	.	.	Spokane
Hindman, W. W.,	.	.	.	Spokane
Hinkle, J. D.,	.	.	.	Spokane
Hodgdon, C. W.,	.	.	.	Hoquiam
Holland, George F.,	.	.	.	Spokane
Holloway, C. K.,	.	.	.	Spokane
Holt, R. S.,	.	.	.	Tacoma
Hovey, C. R.,	.	.	.	Ellensburg
Howe, James B.,	.	.	.	Seattle
Hoyt, John P.,	.	.	.	Seattle
Hoyt, Henry M.,	.	.	.	Spokane
Hoyt, Charles W.,	.	.	.	Spokane
Hubbard, H. Frank	.	.	.	Coupeville
Hudson, R. G.,	.	.	.	Tacoma
Hughes, E. C.,	.	.	.	Seattle
Humphries, John E.,	.	.	.	Seattle
Huneke, William A.,	.	.	.	Spokane
Hurd, M. P.,	.	.	.	Mt. Vernon
Jacobs, Orange	.	.	.	Seattle
Jacobs, A. L.,	.	.	.	Seattle
Johnson, Harvel L.,	.	.	.	Tacoma
Joiner, Geo. A.,	.	.	.	Mt. Vernon
Jones, Richard S.,	.	.	.	Seattle
Kane, M. F.,	.	.	.	Seattle
Kauffman, Ralph	.	.	.	Ellensburg
Kellam, A. G.,	.	.	.	Spokane
Kennan, H. L.,	.	.	.	Spokane
Kershaw, T. R.,	.	.	.	Bellingham
Kimbal, P. W.,	.	.	.	Pullman
Knapp, Lyman E.,	.	.	.	Seattle
Kreider, E. G.,	.	.	.	Mexico City, Mex.

Kuhn, Joseph	.	.	.	Port Townsend
Langford, F. E.,	.	.	.	Spokane
Leehey, Maurice	.	.	.	Seattle
Lehman, Robert B.,	.	.	.	Tacoma
Leo, John	.	.	.	Tacoma
Levy, Aubrey	.	.	.	Seattle
Loomis, Henry B.,	.	.	.	Seattle
Lueders, Henry W.,	.	.	.	Tacoma
Lewis, James Hamilton	.	.	.	Chicago, Ill.
Linn, O. V.,	.	.	.	Olympia
Lindsley, J. B.,	.	.	.	Spokane
Lund, Charles P.,	.	.	.	Spokane
Lung, Henry W.,	.	.	.	Seattle
Mattison, Thomas	.	.	.	Tacoma
McLean, Henry	.	.	.	Mt. Vernon
McClinton, James G.,	.	.	.	Port Angeles
McCrosky, R. L.,	.	.	.	Colfax
Macdonald, Ernest C.,	.	.	.	Spokane
Mantz, C. A.,	.	.	.	Colville
McGilvra, O. C.,	.	.	.	Seattle
Mendenhall, Mark F.,	.	.	.	Spokane
Merritt, H. D.,	.	.	.	Spokane
Millett, Byron	.	.	.	Olympia
Million, E. C.,	.	.	.	Mt. Vernon
Miller, C. E.,	.	.	.	South Bend
Miller, Eugene	.	.	.	Spokane
Miller, Fred	.	.	.	Spokane
Mires, Austin	.	.	.	Ellensburg
Moore, James Z.,	.	.	.	Spokane
Moore, William H.,	.	.	.	Seattle
Mount, Wallace	.	.	.	Olympia
Munday, Charles F.,	.	.	.	Seattle
Munn, Geo. Ladd	.	.	.	Seattle
Munter, Adolph	.	.	.	Spokane
Murray, Charles A.,	.	.	.	Spokane
Myers, H. A. P.,	.	.	.	Davenport
Nash, Frank D.,	.	.	.	Tacoma

Neagle, John L.,	.	.	.	Seattle
Neal, C. H.,	.	.	.	Davenport
Nichols, J. W. A.,	.	.	.	Tacoma
Onstine, Burton J.,	.	.	.	Spokane
Palmer, E. B.,	.	.	.	Seattle
Parker, Emmett N.,	.	.	.	Tacoma
Parsons, Galusha	.	.	.	Tacoma
Peacock, John A.,	.	.	.	Spokane
Pendarvis, C. R.,	.	.	.	Seattle
Peters, William A.,	.	.	.	Seattle
Pickrell, J. N.,	.	.	.	Colfax
Pierce, Frank	.	.	.	Seattle
Piles, S. H.,	.	.	.	Seattle
Porter, Nathan S.,	.	.	.	Olympia
Post, Frank T.,	.	.	.	Spokane
Powell, J. H.	.	.	.	Seattle
Prather, L. H.,	.	.	.	Spokane
Preston, Harold	.	.	.	Seattle
Price, J. G.,	.	.	.	Seattle
Pruyn, Edward	.	.	.	Ellensburg
Quinn, Patrick F.,	.	.	.	Spokane
Ramsey, H. J.	.	.	.	Seattle
Reavis, James B.,	.	.	.	Seattle
Reeves, Frank	.	.	.	Wenatchee
Reid, George T.,	.	.	.	Tacoma
Reinhart, C. S.,	.	.	.	Olympia
Remington, Arthur	.	.	.	Olympia
Reynolds, A. L.,	.	.	.	Walla Walla
Richardson, William E.,	.	.	.	Spokane
Ripley, G. G.	.	.	.	Spokane
Roberts, John W.,	.	.	.	Seattle
Robinson, J. W.,	.	.	.	Olympia
Rockwell, T. D.,	.	.	.	Spokane
Ronald, J. T.,	.	.	.	Seattle
Robb, Bamford H.,	.	.	.	Seattle
Root, Milo A.,	.	.	.	Seattle

Ross, E. W.,	Olympia
Rudkin, Frank H.,	North Yakima
Saunders, Wirt W.,	Spokane
Sauter, O. E.,	Seattle
Scott, W. D.,	Spokane
Shackleford, John A.,	Tacoma
Shackleford, Thos. W.,	Seattle
Shaffer, C. Will	Olympia
Shank, Corwin S.,	Seattle
Sharpstein, John L.,	Walla Walla
Sharpstein, W. C.	San Francisco, Cal.
Sheeks, Ben	Aberdeen
Shepard, Chas. E.,	Seattle
Shepard, Thomas R.,	Seattle
Shine, P. C.,	Spokane
Shippen, Joseph	Seattle
Slausen, Howard B.,	Seattle
Slemmons, A. L.,	Ellensburg
Smith, Eben	Seattle
Smith, Del Cary	Spokane
Smith, Winfield R.,	Seattle
Smith, Sol	South Bend
Snell, Bertha M.,	Tacoma
Snell, Marshall K.,	Tacoma
Snell, W. H.,	Tacoma
Southard, Frank S.,	Seattle
Squire, Watson, C.,	Seattle
Staser, C.,	Ritzville
Stedman, Livingston B.,	Seattle
Steiner, G. E.,	Seattle
Stern, Samuel R.,	Spokane
Stewart, James	Port Angeles
Stiles, T. L.,	Tacoma
Stoll, W. T.,	Spokane
Stratton, W. B.,	Seattle
Tallman, Boyd J.,	Seattle

Taylor, E. Win.,	.	.	.	Tacoma
Teats, Govnor	.	.	.	Tacoma
Thayer, W. J.,	.	.	.	Spokane
Thompson, Will H.,	.	.	.	Seattle
Tolman, Warren W.,	.	.	.	Spokane
Town, Ira A.,	.	.	.	Tacoma
Townsend, W. F.,	.	.	.	Spokane
Trefethen, D. B.,	.	.	.	Seattle
Troy, P. M.,	.	.	.	Olympia
Tucker, O. A.,	.	.	.	Seattle
Turner, L. T.,	.	.	.	Seattle
Turner, George	.	.	.	Spokane
Vance, T. M.,	.	.	.	Olympia
Voorhees, C. S.,	.	.	.	Spokane
Voorhees, Reese H.,	.	.	.	Spokane
Wakefield, W. J. C.,	.	.	.	Spokane
Walker, George H.,	.	.	.	Seattle
Wall, J. P.,	.	.	.	Ballard
Warburton, S.,	.	.	.	Tacoma
Warren, W. T.,	.	.	.	Wilbur
Watrous, Martin	.	.	.	Seattle
Wagh, J. C.,	.	.	.	Mt. Vernon
Weir, Allen	.	.	.	Olympia
Wells, S. A.,	.	.	.	Spokane
Welsh, W. J.,	.	.	.	Roslyn
Welty, H. J.,	.	.	.	Pullman
Welsh, J. T.,	.	.	.	South Bend
Wheeler, L. H.	.	.	.	Seattle
Whited, Kirk	.	.	.	Wenatchee
Whitson, Edward	.	.	.	North Yakima
Wickersham, James	.	.	.	Fairbanks, Alaska
Wiley, Charles L.,	.	.	.	Seattle
Wilhelm, Honor L.,	.	.	.	Seattle
Williams, James A.,	.	.	.	Spokane
Williams, Louis	.	.	.	Seattle
Wilshire, W. W.,	.	.	.	Seattle

Winfree, W. H.,	.	.	.	Spokane
Winders, C. H.,	.	.	.	Seattle
Wooten, Dudley G.,	.	.	.	Seattle
Wright, Geo. E.,	.	.	.	Seattle
Zent, W. W.,	.	.	.	Ritzville

MEMBERS ELECTED, 1905

Abel, W. H.,	.	.	.	Montesano
Bruce, S. M.,	.	.	.	Bellingham
Campbell, J. D.,	.	.	.	Spokane
Canfield, H. W.,	.	.	.	Colfax
Dewart, F. W.,	.	.	.	Spokane
Gose, C. C.,	.	.	.	Walla Walla
Johnson, Harvey, L.,	.	.	.	Tacoma
Kimball, P. W.,	.	.	.	Pullman
Kane, M. F.,	.	.	.	Seattle
Miller, C. E.,	.	.	.	South Bend
Pendarvis, C. R.,	.	.	.	Olympia
Reynolds, A. L.,	.	.	.	Walla Walla
Ripley, G. G.,	.	.	.	Spokane
Shackleford, Thos. W.,	.	.	.	Seattle
Troy, P. M.,	.	.	.	Olympia
Welty, H. J.,	.	.	.	Pullman
Welsh, J. T.,	.	.	.	South Bend

PROCEEDINGS

July 6, 1905, 10 o'clock a. m.

Association was called to order at 10 o'clock a. m. by President Whitson, who introduced Hon. A. G. Avery, President of the Spokane County Bar Association.

MR. AVERY—There has been a time-honored custom of holding the annual meeting of the State Bar Association at the home city of the President, and when it was learned that our President was to be of this city it was with great pleasure that we contemplated entertaining you gentlemen at this time. Because we felt that it would be an honor to have you with us for a few days and an opportunity to renew old acquaintances and make new ones.

There is no doubt that the committee could have, and should have, selected some one from our local Association who could welcome you to our city in more fitting terms than I, but you may be assured that none could do so any more heartily or sincerely; that no one could wish to make you more welcome or to make you feel that welcome more.

We cannot point with pride to our magnificent Puget Sound, because we have it not. We cannot invite your attention to irrigation projects of the middle state, because they are denied us. But we can show you a thriving, prosperous city and country, and some things which nature may have denied your respective localities, and through the kind efforts of some of our guests from Idaho, we have borrowed a portion of that state for exhibition later.

It is not my purpose to now take your valuable time from the consideration of other matters which are to be taken up by the Association this morning, but we do wish to give to the members of the Association, who have honored us by their presence, a good time in our city. You are entitled to the best we can

offer and to the best of our humble ability it is yours. We would present to you the keys of the city, but there are none. The doors are unlocked and the keys thrown away. Mr. President and gentlemen, in behalf of the Spokane County Bar Association, I extend to you a most cordial welcome.

MR. PRESIDENT—Mr. Sharpstein, who was selected to respond to this address of welcome, telegraphed me yesterday that owing to unexpected business he would be unable to attend, so Judge Wooten of the Seattle Bar has kindly consented to take his place.

MR. WOOTEN—Mr. President and gentlemen:

On entering the room just a few moments ago, your President did me the unexpected honor, and to me somewhat of an unaccountable honor, of asking me to respond to this welcome. This is a delicate responsibility, even when a man performs it in his own right, but when one is submitted for an older and much better qualified man, it becomes doubly so.

In behalf of the visiting members of the Association, especially in behalf of members of the Seattle Bar, those here and those who are to come, of whom I am satisfied there will be quite a number before the proceedings have been concluded, we respond to the address of welcome, and express our appreciation of the words of welcome in unqualified terms. We are glad that we are able to be present at the proceedings of the Association at this place, and it is a pleasure to us who live on the coast to visit this great inland empire and visit its most representative city, which, while different in its general characteristics, different perhaps in the difference of industries that are here and that are springing up, while unlike those on the coast, yet shares in common with all portions of the state, the same spirit of enthusiasm and enterprise that is to make this an important city of the Pacific Coast, which I fully believe it is destined to be. In the building up of a city of this kind, with its multifarious interests, the legal profession will aid and exert a controlling influence. This state is controlled now by its jurisprudence, and one who could speak to you better than I upon its legislative work, is Mr. Sharpstein, of the city of Walla Walla. In both the judicial and legislative branches the

legal profession has, as it always will throughout the country, exert a weighty influence upon the business of the State of Washington, and I know of nothing that will conduce more to the proper exertion of that influence, than the assembly of these meetings in different portions of the state, while the members of the Bar Association extend their personal acquaintance with each other and the needs of different sections, and thereby are enabled to contribute much for themselves and for their section. Erroneous impressions are removed and thus it becomes a benefit to the entire profession.

We expect to have a pleasant time here, not only in the proceedings of the Association, but in those entertainments which have been furnished and promised us and to our Association.

And again, in behalf of the visiting members, we desire now to thank you for the welcome that has been extended, and to thank you in advance for the pleasures which we anticipate in being here.

The President then delivered his address to the Association. (See Appendix.)

REPORT OF SECRETARY.

To the President and Members of the Washington State Bar Association:

I have the honor to report as follows:

Number of members as per last report.....	226	
Number joined since.....	44	
		270
Number dropped for non-payment of dues	3	
Number died.....	7	
Removed from state	4	
		14
Total membership.....		256
Cash received from admission fees	\$220	
" " " dues	120	
Paid to Treasurer	\$340	

C. WILL SHAFFER,
Secretary.

REPORT OF TREASURER.

OLYMPIA, WASHINGTON, July 1, 1905.

To the Washington State Bar Association:

GENTLEMEN—I have the honor to present this, my annual report as Treasurer of this Association for the fiscal year ending July 1, 1905:

1904.		
July 1,	To balance as per last report	\$149 05
Sept. 15,	To received from Secretary.....	119 00
Mch. 14,	" " "	221 00
		<hr/> \$489 05

1905.		
Mch. 10,	By paid warrant No. 31.....	471 20
July 1,	To balance, cash on hand.....	\$ 17 85

Respectfully submitted,

N. S. PORTER, Treasurer.

Report of Committee on Judicial Administration and Remedial Procedure:

Washington State Bar Association:

GENTLEMEN—Your Committee on Judicial Administration and Remedial Procedure beg leave to submit the following report:

1. We recommend that the association approve, and take steps to secure, the adoption of an act amending the present method of making up the record on appeal from the Superior Courts to the Supreme Court, in the following particulars:

(a) Exceptions to all rulings and adjudications should be taken by serving and filing a written assignment of errors, such assignment to state with precision, but concisely, each ultimate fact found, and each legal ruling made to which exception is taken, each point so presented to be separately stated and numbered. This should include, also, all matters of reception or rejection of evidence of which complaint will be made on appeal.

(b) Such assignment of errors should be served and filed at the same time that the proposed statement of facts upon appeal is served and filed. The statement of facts should contain no more of the record than is required to clearly present the points reserved by the assignment of errors, and proposed amendments thereto should consist as well in striking out unnecessary matter as in adding other matter conceived to be relevant to the errors assigned.

(c) On appeal the appellant should be required to prepare an

abstract of the issues presented by the pleadings, and of the matters shown by the statement of facts. A copy should be served upon the respondent, who would have a brief time to suggest amendments thereto. This abstract should be printed, together with the assignment of errors, to be transmitted with the appellant's brief to the Supreme Court.

2. We recommend that the association approve and take steps to secure the adoption of an amendment to the present practice of submitting instructions to juries, in this: At the request of either party the trial judge shall instruct the jury fully in writing. At the conclusion of the evidence the jury should, at the request of either party, be excused, and the instructions to be given the jury determined. Counsel, in their arguments to the jury, should have the right to refer to the instructions as the law of the case, and discuss them in connection with the facts. The judge should then read the instructions as a whole, and the jury should take the instructions with them when they retire to consider of their verdict.

3. The increase of litigation in this state in the last few years, attendant upon the rapid increase in population, and the growth of the diversified industries of the state, has been such as to cause a very considerable increase in the number of judges of the Superior Courts, and to throw a great burden of labor upon the Supreme Court, much more than the court, as originally constituted, could bear. The exigency has been met, temporarily, by increasing the number of judges of the Supreme Court. For some years, at least, it is probable that this measure will relieve that court, but if the state increases in population, wealth and industry as rapidly in the next few years as it has in the past, it will be but a short time that some other remedy must be devised if our highest court shall be able to give the attention to the matters submitted to them which their importance deserves, and, at the same time, bring an end to litigation within a bearable time. We therefore recommend that a special committee be appointed to consider this subject, and determine what, if any, action is best to relieve the situation, should the stress of business in the future bear as heavily upon the Supreme Court as it has in the past. We recommend this as a matter of anticipation, in order that no hastily or ill-considered expedient may be adopted upon the spur of the moment when the exigency actually arises.

4. In the past the recommendations of this association have not met with the approval of, and action upon them, by the Legislature, which they should rightly command. We believe this to be due to the fact that no proper steps have been taken to impress the desires of the association, and the importance of the recommendations they make,

upon the legislative body. We therefore recommend that a special committee be appointed to consider what steps are feasible that would tend to securing from the Legislature proper attention to the recommendations of the association. Respectfully submitted,

HERMAN D. CROW.

F. T. POST.

WILL G. GRAVES.

MR. STERN—I rise to make a suggestion or two in respect to the report just made, and also as to the President's paper. It has been the uniform practice, I think, of this Association to discuss the President's paper, and I believe with great profit to ourselves. A time ought to be set when we will take up the various matters so ably presented by the President.

I also rise, Mr. President, to express my extreme gratification at the very large attendance for the opening of this meeting. I think never in the history of the Association, and I have attended a great many of the meetings, have I seen so many members present, especially so many members of the Spokane Bar, and from this great number it certainly strikes me that this is to be the best meeting we have ever had.

Now I have listened with great pleasure and profit, as I believe every other member of the Association has, to the spirited paper of the President. It is full of meat, full of thought, it is full of suggestions that I think can be profitably discussed, and I think it is proper that it should be carefully considered by this Association, and I suggest in respect to that, that when there comes a lull in the proceedings, that that matter be set down for discussion, and definite and certain persons be designated to discuss the subject. Now, in all that the President has said, all of us may not agree, and then there are others who may, and it will be a benefit, not alone to this Association, if we can take up these questions and discuss them to great benefit to others as well as to ourselves. Other associations do it; the dentists do it; the medical practitioners do it.

As to the report of the committee headed by Judge Crow, I want to make just a single observation: I am wondering whether or not if we started a new sort of procedure which will result in presenting more exceptions for examination by the Supreme Court, and in the manner as suggested by the dis-

tinguished gentleman, whether they are going to have the consideration of the Supreme Court. Heretofore, it seems to me, we have presented a good many that have been singularly overlooked, and query; are we going to be any better off so far as the Supreme Court is concerned, if we adopt that practice? He can answer better than anybody, and his suggestion that we have the law settled in the way of instructions, I think is all right. We aim to do that in our own way. My thought is that a copy of the instructions to juries should be sent to the jury room, so that one juror need not ask "What did you mean by this, or that;" they would have the copy before them. These matters can be considered with profit to ourselves.

I wish again to express my extreme pleasure at the large that have come here to attend the opening of these proceedings.

JUDGE CROW—Mr. Chairman, I didn't come here to discuss that report. In justice to myself and other members of the committee, I didn't have very much to do with it. Senator Will Graves is entitled to the credit for it. I have been very busy and he has been very busy, and he drafted the report after we had some discussion over matters of law, in the city of Olympia. Mr. Graves and I were both members of the State Senate in 1903, and he presented a bill covering this proposition, and it was carefully considered and amended. As I recall it passed the Senate, but for some reason that I do not recall, it failed to pass the House. I think the general purpose of the suggestions is this: Under our present method of pleading, a great mass of evidence and record is taken to the appellate court and it is absolutely unnecessary for the purpose of considering the vital points in the case. Assignments of error are made and it becomes necessary for the Court to go through the entire record for the purpose of seeing what merit there may be or may not be, and it is burdensome upon the Court to read the great mass of record which is sent up and has to be examined, and in which in reality do not have much to do with the question. Now this is not only a burden upon the Court, but it is also a burden upon the litigants, and they are compelled, under the present practice to get up the statement of facts, the entire record, and the only person who would object

to this sort of reform, is perhaps the stenographer. I don't know, I would not attempt to say, but it does seem to me that some reform along this line would be a very great relief to both the bench and the Bar, and I think that you want to hear an extended discussion of this question, and I think you want to hear from Senator Graves, whom I know has given the subject careful consideration and study.

MR. GRAVES—Our present practice of making up the record for appeal is the most slovenly that can be conceived of, and it forces a lawyer, however desirous he may be to present a clean and succinct record, into a slovenly practice. In every appealed case there are certain questions which are material, and which ought to be urged upon the Court to the exclusion of everything else. Now the record should be confined to such matters as are necessary to present these questions, and should not go beyond that. Under our present practice, however, it is impossible to prepare a record which shall present just these questions and be certain that it will receive consideration from the Supreme Court, and for this reason a party desiring to appeal any such questions he is going to present, he prepares his statement of facts so as to present these questions and nothing more. He prepares his statement of facts, in other words, as it should be prepared for the succinct presentation of the questions to be relied upon.

Now by this plan here, and it was embodied in the bill, as has been stated by Judge Crow, the appealing party is required to state clearly the questions upon which he relies in his appeal, at the time that he serves and files his statement of facts, and the Judge then has it in his power to cut down that statement of facts. In that way the Supreme Court is not only relieved of going through a great lot of record, but the case is presented in such a manner that they can pass upon these questions. In other states it is found that the matters in issue are so clearly presented in this way that the Supreme Court need not in more than one case in five hundred or a thousand, go to the statement of facts at all, as they are enabled to get at the vital questions without unnecessary burden, and this will conduce to much better decisions, and a more clear decision of

the matters presented. I think these things will be accomplished, at least somewhat along these lines.

Now if I may be permitted to pass to the other points of this report, I think all who have much experience in jury trials and are familiar with the decisions that have been rendered, know that the principal thing that causes hung juries or improper verdicts, is the failure of the jury to understand the law of the case. Now before the argument is made, if there was a provision in the statute that the Court shall hear arguments upon the instructions and decide what instructions shall be given, and have them in writing, there is less chance for the trial Court to fail in giving the proper instructions, and the jury is pretty well advised about what the law is on that subject. Certainly the trial Court will know what the law is on the subject if the lawyers on both sides do their full duty. So much for the trial Court. Then opposite counsel in presenting their case, can state so much more clearly just how these facts should be considered by the jury under the law. They can say to the jury, "These are the instructions that the Court will give you; now apply the law of that to the facts as it now appears to you." Then, in order that the jury cannot misunderstand these matters, let the instructions go to the jury room with them, and if a dispute occurs there as to the instructions that were given, they have the written page before them and can refer to that.

Now in respect to the matter of looking to the future and providing for the lessening of labors of the Supreme Court, I think that probably for the next few years, the temporary plan which has been adopted of increasing the number of the judges will be sufficient to overcome any trouble. But it is only a temporary relief. In the nature of things it must be. This state is going to grow in the future as it has in the past, and the mere expedient of adding a few judges surely cannot solve the problem. I think we ought to consider it through a special committee who shall make a study of the matter, and inquire into the various plans which have been tried in other states, and select what has been deemed the best and lay it before the Bar Association for discussion, and we will then have a con-

sensus of opinion of this Association, as we are supposed to, and do have among our members, a great majority of the Bar of the state, and we shall have from them an opinion as to what is best, and shall not adopt something that is doubtful, but lead straight to a relief of the situation.

Now it has been referred to very many times before this Association, and probably will be many times again, as to the fact that recommendations that the Association makes as to needed law reforms, are not heeded by the Legislature. I think that is because we have not systematized our work sufficiently. It appears to me that a proper plan would be to have a standing committee of this Association, to secure legislation which is recommended by the Association. At its head should be placed a chairman who should not be changed and who is a man of deeds and not of words; let him remain there for several years, or as long as this particular branch of the work is felt necessary; let him select his own committee; let him select it from each of the individual legislative districts, and let all matters of needed legislation go to that committee; let a place be provided by the chairman for its meetings, and let him send out to each of the members instructions to approach the members of the Legislature from his district, and endeavor to get the desired legislation through. That is my own opinion about it, but there might be more effectual ways. I think it ought to be made a subject of thought for the special committee as to what could be done to get the things which we recommend.

These are some of the thoughts of this report.

MR. ROBERTS—As to the first part of this report, I certainly hope that the Association will not adopt it. I remember when I first came to the Bar of this state, in conversation with one of the men who stands very high in the profession, he said to me, "the practice of this state is largely framed along the lines of making as much work as possible for the lawyer," and it seems to me that to adopt this report, that part of it relating to the making up of the record on appeal, is imposing further burdens upon the lawyer.

Now if I understand it correctly, to prepare the exceptions as provided in the report, the lawyer would necessarily be com-

pelled, first, to have the entire record. Then, after he has made up his exceptions from the record and has gone to that expense, he must then procure an abstract of the record, and that would be additional labor and expense. Now when you come to prepare an abstract as suggested by Mr. Graves, I don't believe that it can safely be done. Now suppose I have a case and I proceed to prepare an abstract of what I believe to be an honest abstract, and if my friend Mr. Graves is on the other side, he will never concede that my abstract is correct. I just had an experience in which counsel on the other side sought to prepare a statement of facts without getting the stenographer's notes, and counsel prepared what they claimed to be a full and correct statement of the case. In that particular case I happened to be upon the winning side, and I took the position with the trial Court, which I believed to be correct, that if he sent that statement, it meant a sure and absolute reversal, so I proceeded to prepare what I called a correct statement of the case, and they accused me of being just as unfair as they were, and it resulted in the Court refusing to sign either until the notes of the stenographer were presented. Judge Crow will remember in the state from which he came, they undertook to do that, and the Court said that they couldn't see but there was something which seemed to be omitted, and in every case the Supreme Court dismissed the case, and the attorneys then thought the only safe thing to do was to take up the entire record.

I want to say as to the other part, as to the instructions to the jury, I am heartily in favor of that. I think the instructions should be delivered before the argument of counsel, and this is certainly of importance, and I am heartily in favor of it.

MR. WOOTEN—I simply want to say that I have been practicing under this system a little less than two years, but have been practicing under the system as referred to in the first part of this report for over twenty years, and was very familiar with it in the State of Texas, where that system is largely in vogue, and I want to say I like the system here much better. I believe the rule that prevails in our present system, that all orders of the Court and matters of record may be considered excepted to and that counsel appealing may take advantage of them, is

a much better one than to require the segregation of a great number of assignments of error. In the first place, during the trial, counsel will save a great many exceptions that they do not even present in their briefs. Now it seems to me that practice like ours puts a premium upon the acumen and the acuteness and the intelligence of the attorney to pick out in the record the points on which he can reverse the case, and it does not involve as much labor as the system suggested will do; the judge may differ as to whether the facts embodied in the appeal are correct or not, and it results in an interminable controversy between the counsel, and the Court is frequently drawn into it. Of course, the object is one we all sympathize with, to lessen the labors of the Supreme Court; that has been the endeavor in all the states of the United States, but I think it has been found that there is no royal road to ease for the Supreme Court. And the suggestion of taking up so much of the record as is necessary—well, who is going to decide that? In the first place, counsel appealing is going to fix up a record that will reverse the case, if he knows how, and counsel on the other side is going to resist the record. Every judge has enough of the pride of position and profession to want to see his decision sustained, and of course he thinks he is right, and he does not want to see a record fixed up that will reverse him unless he clearly sees that he has made an error. Now it is impossible for anybody to say what part of the record is essential and what is not. Now counsel could get together and agree upon a statement of facts and then present it to the judge for his approval, and with the stenographer's notes, it is generally easy enough to agree upon a statement, and frequently counsel could agree on eliminating a large part of the record which is unnecessary and proved to be so. Of course, that could be done here under our present system. So I really believe the system here is the better; at least, I think we rush at evils we know not of.

As to the instructions to juries, I firmly believe in that. I think the general charge should be given before the argument of counsel begins. That is the law in many states, and it is a very correct practice; then counsel can discuss the facts with reference to the law. I think after the Court has instructed

the jury orally, frequently they overlook or forget portions of it and rely upon their memory, and this is prolific of mistaken verdicts. The fact is, juries pay very little attention to the directions of the Court at all, because they do not understand it.

At which time adjournment was taken until 2 o'clock p. m.

AFTERNOON SESSION.

THE PRESIDENT—The next order of business is the report of the Committee on Legal Education and Admission to the Bar.

MR. GRAVES—Before passing to that head of business I think we ought to have some disposition made of the report that was submitted this morning.

MR. DOVELL—I move you that the report be laid on the table.

MR. GRAVES—I know this is not debatable, but I suppose we will not have any dispute on that matter. Now it may be that the first recommendation that was made there may be without merit. I am a very strong believer in it; I believe in it, not because I consider it so essential to save our Supreme Judges labor, as that I think it will clarify the issues that are presented and render it more probable that there will be more attention to points overlooked. I don't see why there should be any objection to this, except the objection of the lazy man who has found that it is mighty easy just to say to the stenographer, "I want a record of this case," and go away until it is ready for him, and then files it and that is all he has to do. I don't know why there should be any objection to this system, when it conforms so closely to the Federal system. With a little change in procedure, it is the Federal system. I am not going to discuss this any further, because I fancy I am in the minority, very much in the minority, but assuming that that part of the report is objectionable, it seems to me there are other portions

of it which should be accepted, which should be acted upon. I haven't heard anyone suggest that there was any objection to this method of instructing juries, for instance, and it seems to me the other portions should be considered.

Now, if this motion were divided, we might then take it up seriatum. Those are numbered separately, they can be considered separately, and the Association can reject those that it does not approve of, and accept those that it does. I therefore suggest that this motion be lost.

MR. ROBERTS—Mr. President, I am one of those lazy men, and therefore take my preliminary words from the Senator from this county.

I think there is one possible part of that report that should be passed practically unanimously and put into the hands of this legislative committee or pushing committee, or whatever it may be, and while I don't agree to adopt any part of the report, I think it might be in order that the question might be divided so that if anything should be laid on the table it will be that part which relates to the record to the Supreme Court. I think we can pass the other part, and it ought to be done.

THE PRESIDENT—You leave the Chair in some embarrassment as to whether the question is divisible.

MR. GRAVES—It occurs to me that if that question were withdrawn and brought before the Association by a motion that the first part of this report be not approved, or be approved, as the case may be, whichever motion is desired to be made, and that the second paragraph be approved or not approved, as the case may be, that the wishes of the majority can be accomplished in that way.

MR. DOVELL—Following the suggestion of Senator Graves, I now move you, if it be in order, that the Association disapprove of the first recommendation made by the committee.

Seconded by Mr. ———.

Carried. (After withdrawal of first motion.)

MR. DOVELL—And I move that that part in relation to juries (Paragraph 2 of report) be approved and adopted by the Association.

Seconded.

Carried.

MR. PRESIDENT—What will you do with the rest of the report?

MR. GRAVES—I move you that the remainder of the report, the two succeeding sections, be approved and adopted, and that committees be appointed as therein suggested. The first is to appoint a special committee to consider what means ought to be taken in anticipation of the relief of the congested business of the Supreme Court.

The second is to appoint a committee to consider in what way we can get the Legislature to pay some attention to our recommendations.

Seconded by Mr. Wooten. Carried.

THE PRESIDENT—As to the manner of the apportionment of these committees, I prefer the Association to indicate their desire.

MR. GRAVES—I suppose under the constitution and by-laws, the President has the power to appoint.

THE PRESIDENT—I think that is correct, and it is proper that my successor should appoint all these committees.

THE SECRETARY—In this connection, as to the last paragraph of this report, that the Legislature has not paid any attention to our recommendations, I think the fault has been largely our own. My experience is that the Legislature is quite willing to listen to any recommendations we have to offer. Last year Mr. Macdonald read a paper recommending an increase in the number of judges of the Supreme Court, and the Association approved of it, but no committee was appointed, and nothing was done; it was overlooked in the rush of business the last day, and in correspondence with the Executive Committee I took that matter up, and while everybody knew there was a general demand for it, and of course that was an easy matter to get the Legislature to act upon; but in my intercourse with the members of the Legislature, I found they were willing to listen on other subjects, so I think we will find that the Legislature is willing to listen to our suggestions.

REPORT OF THE COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

MR. CONDON—Mr. President, I have no report to make. I only knew through the courtesy of the Secretary that I was on that committee, and I was not apprehending that I would be on any committee. I have some very positive ideas on the subject, one of the subjects, at least, that this committee would have to do with, and I would like to get them before the Association, but in the position I am, I have nothing to report.

I think there is one thing at least, in the law of this state, that ought to be corrected, and that is the matter of the general education, but to what extent we want to go—if we want to have toning up of that. There ought to be some requirements, some test as to a man's general education before he is permitted to take an examination on the technical subject of law. We could do a good deal towards toning up the bar if we should require the applicant to satisfy the committee that he has a good general education, and if we want to go to some extent—if we want to have a test like the State of New York, to prove the fitness of an applicant before he undertakes to study law, is a question. But we need not go to that extent at the outset. Or if we had some specific statement requiring the committee to examine him or get some other satisfactory evidence, a diploma from high school or university, it would go a long ways toward toning up the general bar.

Before the next Legislature meets we will have another meeting, and I would like to get a report before this Association along these lines, if I would be permitted to do it, and if I am on the committee another year I will try to get a report in shape so that it can be acted upon. At this time I can make nothing more than a suggestion.

MR. AVERY—Do I understand that that is in the nature of a report?

MR. PRESIDENT—I think the Association could treat it as a report.

MR. AVERY—I think it is a very good suggestion, and that a little work along these lines would be very much to the advantage of the bar and the people at large.

The gentleman speaks of the law in New York State. I am somewhat familiar with that. It requires, before one can become a law student, that is, three years before that term commences to run, you have to register, and before you can register, you have to secure, unless you have a degree of A. B. or B. S., a law student's examination. That is a good stiff English examination, and it assures the world at large, who are obliged to hire an attorney, that he has at least a good English education.

I think that the suggestion of elevating the standard of general education, is not only a good one, but I think there ought to be a registration period, as for instance in that state, there has to be a registration, and then there has to be three years' study of law after that period. My recollection is, however, that three years in an office, or one or two years, I forget which, in a law school, fulfills the requirements. I think it is a most excellent arrangement—it raises the standard of attorneys, and eliminates a great many people who ought not really to practice law. I do not mean to make a "closed shop" of it, or anything of that kind, but there are certain qualifications that the world demands, and I think when the Supreme Court says, "This one, or that one, is an attorney at law," that he ought to know something more than his mere legal qualifications.

MR. HEUSTON—To give it a standing upon the minutes and cause it to be brought before the next annual meeting, I move that the suggestion made by the individual member of the committee be adopted as the report of the whole committee. Make it debatable and see what we think about it. Motion carried.

MR. PRESIDENT—This is not a special committee, but that is a request for this particular committee to report at the next meeting.

Motion by Mr. Graves, that at the next meeting the committee present a written report covering the qualifications of general education. Carried.

MR. PRESIDENT—The next order of business is a paper by Mr. S. M. Bruce of Bellingham. The subject is "The Jury System." (See Appendix.)

MR. GRAVES—I appreciate very highly the learning and industry shown in the preparation of the paper that has just been

read, but I dissent most heartily from the sentiments therein expressed. It is true, as said by the author of the paper, that we frequently hear discussion with reference to the faults of the jury system. Where do you hear it? Do you hear it among the people, among those who have the litigation, whose cases are being tried? Never. You hear it among the lawyers, and you hear it nowhere else. Among the lawyers, whom do you hear it from? You hear it from those who are furthest away from the people, and from those who have never tried cases, perhaps, and from those who defend cases which justly merit the reprobation of the people. It was but the other day that Judge Taft took a fall out of our old venerated jury system. I have a very high regard for Judge Taft's learning and abilities, but it simply proves what I said, that those among the lawyers who condemn it are those who are furthest from the people. Judge Taft, I suppose, has never tried a case in his life. I don't think there is an instance where there is a trial judges who will repudiate the jury system. I would just as soon go before a jury in this Court or in the Superior Court of this county, defending a personal injury case, if I had a meritorious defense, as I would go there and defend a suit on a promissory note, and I would know that I would receive justice from the jury as my case merited. Why is the jury to be condemned above everything else? Juries are made up, or should be made up from the every-day population round about us. They have the intelligence and ability and honesty of the average every-day man; just so much, and no more. Some fail badly in intelligence and integrity, perhaps, but the others stand high. There is no system known of man's workings that is perfect. Why should you reproach a system that has stood so long and done so much good? It is said that the jury system is the refuge of the man with a weak case; that it is only he who seeks to have a jury trial. In this state the person who demands a jury trial must put up the jury fee, he must pay \$12 in addition to the other costs in the case. Go to the Superior Court of this county and see how much time is taken up in the trial of cases before juries as compared to trials before judges. With juries, more than three-fourths of the time of the Superior

Court of this county is taken up with the trial of jury cases. The time which is taken up with the trials before judges is infinitesimal as compared with that taken up by jury cases. Now why is that? Are three-fourths of the cases so weak on one side? No sir, it is because the average lawyer, the one who believes he has a fair case, is more willing to submit it to twelve men than to one. Why should we lift our judges above jurors in integrity and ability? Judges are drawn from the ranks of lawyers. Lawyers are drawn from the ranks of men. Lawyers are neither better nor worse than the men around about, and twelve men or less are always better able to decide these disputed questions of fact than one man. It must be so, because they are not so apt to be swayed by prejudice or passion than the one. It is intimated and said against juries that they are swayed by public opinion, and it is inferred that judges are not so swayed. I think it is too much laudation of ourselves, and I don't think the lawyers are any better able to act without prejudice and passion. A judge is a lawyer; he is but one man, and he is more apt to act with prejudice and passion than twelve men are.

It is said that we might get experienced tryers of fact who would be better fitted to hear evidence than the average juror would be. I think that might well be doubted. I don't think that the judge who sits on the bench is any better qualified to hear evidence than the twelve men in the jury box. He may hear it better to his own satisfaction; he may think he is hearing it better, but are not the twelve men able to hear it better than he can? That must be so because they are acquainted with the men who testify on the stand; out of twelve men you will find a number who are the same kind of men, engaged in the same kind of business, and they can tell just as quickly as the lawyer whether the witness is testifying truthfully or not. And with the judges, it is difficult also to remove them from politics. Any office that draws a salary in this country is held by a man identified with the dominant political party, and we have never been able to get our judges out of politics, and I don't think you will ever get tryers of fact out of politics.

You have got your jury system out of politics. It is said

also that it is enough to condemn the jury system because of improper practices often resorted to, but we have laws against jury fixers. We have a law on the statute books against fixing judges—as much for one as the other. Place once in the hands of judges elected by the people or appointed for long terms, to weigh evidence, and you will inaugurate a system such as has not been known at any time within the history of the English people.

MR. WOOTEN—I cannot forebear to add my endorsement and complete concurrence in what has been said by Mr. Graves. Leaving out of the question what may be called the speculative and scholastic feature of the bill and getting down to the practical portion of it, namely, the pessimistic view of civilization in general, which I think cannot meet with the approval of a conservative, rational number of the profession, I am satisfied it would meet with the approval of the best judges in the country who have observed jury trials and the tribulations of twelve men in a jury box.

I remember some years ago a symposium contributed to by the greatest judges in America and England, in which appeared a series of articles by Justice Miller, who served so long and with such distinction on the Supreme Bench. He wrote three articles on the subject, in which he took the position that the jury system was not greatly fortified by the English law and the ancient systems of jurisprudence. He stated that during his services of more than twenty years on the Supreme Bench, that he had seen more absurd conclusions arrived at in the consultation room of the Supreme Court of the United States, and the most ridiculous conclusions arrived at by them than he had ever seen in any jury box. And he went on to point out why the professional trial lawyer, who has looked at the technical side from the standpoint of a lawyer has become incapacitated from arriving at correct conclusions in fact. Cases tried in a court house are cases involving a common knowledge of every-day things. For instance, a suit upon a contract for the erection of a building, or for the keeping of some contract of business, commercial or otherwise, it usually contains a lot of ordinary fact that a man engaged in ordinary business in

the community understands better than any judge, be he ever so learned, that, if set on the bench, because a lawyer, looks at it entirely from the technical standpoint and biased by his professional training.

I undertake to say, without any disparagement of the bench, that if you take men who have all their lives long, for instance, been corporation lawyers, and gain their intellectual information from their side of the question, and put them on the bench to try cases, that the citizen would stand very little show. The man doesn't live who can emancipate himself from the bias of his intellectual training, and what would be the result of placing the man of a certain branch of intellectual training on the bench?

Now it is useless to refer the American and English lawyer to the imperial institutions of Germany. The English speaking people, both in the mother country and here, have their institutions perfected by time and the wisest members of the profession, both of the bench and the bar are steadily advancing and progressing.

There is one gratifying fact about these discussions: they provoke a perennial interest, but they are harmless as long as the American and English people understand their rights.

MR. ROBERTSON—I have listened with a good deal of interest to the paper in relation to the jury system, and am glad that the question is before this Association, because it is now getting popular to attempt to abrogate the system under which our laws have been developed, and to substitute some other system, as has been proposed, and I for one believe that there never will be a time when the abrogation of the jury system will be approved by the citizenship of the United States, any more than any other system that has been crystallized, you might say, by centuries of successful practice. The reason why the jury system is beneficial is because when a judge is on the bench, after some association with attorneys, he necessarily becomes familiar with men of capacity, and of their methods of procedure, and many times these men, especially lawyers of great ability, have great influence with courts—that is, they have influence with courts because they have ability to present

questions of fact and of law, and the court, to some extent, becomes careless under the influence of the capacity of the attorneys practicing before them, that offsets any question, in my opinion, of sympathy or passion or prejudice that might arise in the minds of the jury. In addition to that, you have only one mind to prejudice when that mind is on the bench, but you have each of them when they are on the jury. Hence, the jury comes into court unfamiliar with the litigation that has been before the courts for sometime, and frequently courts have become biased in such litigation to the extent that they bring into consideration of the case, knowledge that has been gained by them in practice before the courts.

Not only that, but where there is passion in the jury system, as there sometimes is in some of the Federal Courts, it occurs out of some improprieties in the system itself. Undoubtedly juries can be influenced, but I don't believe what the gentlemen who has just addressed this meeting says in regard to juries tending to favor persons who have claims for personal injuries against corporations. I know that it is not so in this Court, and I don't believe in the Federal Court in Spokane county in the last five or six years it has been possible to succeed in cases before juries in this Court, due to the fact that for a number of years, both in this Court and in the Courts of the United States, a system of jury selection has existed which in my mind should be abrogated by a better system. Take for instance the Mitchell trial. I believe there, under the direction of the District Attorney or something, they went back some five or six years and arbitrarily selected a jury list, because it was thought, I presume, that people would be influenced in some way if the jury were selected generally throughout the district, and it shows the power that the Jury Commissioner has in the Federal Court. I don't think it is good practice.

Now, in the question of condemnations, I simply cite this because my Brother Graves says he would be willing to submit a case to the jury. Most of these juries are selected by the Sheriff, especially appointed to select a jury, and in both of these cases I think the selection is improper. Now, under the

present law in the counties of this state, I think one of the judges has directed a jury list of 10,000 to be selected, and that is a proper and fair way, and the only proper and fair way to do it, and they serve for thirty days, and I believe the practice in Spokane county is freer from corruption than it has been for the last fifteen or twenty years. In my own opinion, do what you will, you never know, the judge never knows, or anybody on the other side can tell what the jury is going to do. But you can, almost anybody can tell what the judge is going to do—that is, if he is an honest man, you know that justice will be administered with a passive hand. One time in Tacoma, our Brother Heuston and a number of others got together because we were dissatisfied with the bench, and we got what we thought was a very capable man. This run on for three years, until the coming of election, and then it was noticed that the Court was becoming partial in his decisions in order that he might strengthen his political fences. Juries cannot do that; they are only before the Courts for a short while, and what we ought to do, what ought to be done, I think we should recommend that the selection of juries in the Federal Court should be made by the same method as in State Courts—that is, of securing juries from a large general list.

I don't think any Jury Commissioner that ever lived ought to hold, practically in the palm of his hand—I don't want to say dishonest juries, because none of that kind have ever been selected to my knowledge; but it is too big a power to be held by anybody. But this jury system will stand forever, and will not be abrogated—I don't think it will ever be with the consent of the American people, that constitutional provision—trial by jury. If it does, in my opinion, under our form of government, if you were to do away with the jury system you would leave all the rights of litigants to the positive decision of judges who necessarily become partisan, because there are only a few men in the world who rise to the heights of greatness. Attorneys ought to be protected and kept within their rights and at the same time carry on litigation on the plane it ought to be. With our jury system and capable judges and able men on the Supreme Bench, we have today in America the best sys-

tem of any government in the world; equally as good as Germany, and much better than Russia, and the American citizen is protected, as far as his right of trial by jury is concerned.

MR. ROBERTS—As to what Judge Wooten has said, reminds me of a case at Leavenworth, Kansas. Thomas B. Van Allen was United States District Attorney, and counsel on opposite sides decided to try the case before Judge Miller. It was a suit in replevin to recover some mules on behalf of the government. Justice Miller heard the case and decided it against the government. That evening the judge was sitting at dinner at his hotel, and Mr. Van Allen came to him and said: "Judge Miller, when you sit on the bench in equity, or cases before a jury, you may be a good judge, but I want to tell you that as a jury you are a damn failure." I believe that twelve men can better try a question of fact than can one man, and I believe that not because I represent plaintiffs in personal injury cases. My practice is on the other side, and when I appear in such a case it is usually for the defendant, though I would prefer to try any case before a jury rather than to the judge. But I want to emphasize what has just been said here about the predilection of the trial judge. Over in Seattle we have six judges sitting, and you find the attorneys of that bar in certain instances trying to get cases before a certain judge. Why? Not because they believe he is corrupt; not because they don't believe in his integrity, but because they know that that particular judge will rule in a certain way upon certain particular questions, and do so perfectly honestly, and as he has well said, it is not possible before the jury to know what they will do. What we want is the elevation to the bench of men of more broad guage, learning and knowledge, and not men of incompetency who bring the profession into disrepute, and then I think you will not have so much trouble with the jury system.

MR. CONDON—I would like to say a word or two, starting with the suggestion of the gentleman who preceded me, to elevate the bar to perfection and the bench to the same height. I think we are getting better juries today than for a long time past, and by the present system the administration of justice is brought close to the people. No citizen can come out of the

jury box without feeling that he has had a part in the administration of the law and of justice. He comes out with the feeling that he has had a part in the decision of the rights of people in litigation, and they are better citizens, and if from the same ranks of business or professional calling, they are better able to tell and better able to quiet the distrust that is prevalent. None of us can deny it; we come in contact with distrust all the time, and no juror attending upon courts and listening to the talks made by the judge to the jury and by the judge to the lawyer, can help but be a better citizen than he was when he went there. So, admitting of the uncertainties, I say it is the saving grace of the common people and close in touch with the administration of justice, which is reason enough for us to continue it.

MR. MUNTER—I regret that I did not hear the entire paper read which is just being discussed, but from what I have heard in the discussion I am in the happy condition of being able to agree with both sides of the controversy to some extent. There is no question that defects exist in our present jury system, or at least that the results are not as satisfactory as would be desired by the bar and by the public generally, but I fully agree with those who oppose the abolition of the system. By reason of the pride which we naturally feel from what has come down from our Anglo-Saxon ancestors directly, I believe that when the advantages which have been pointed out in favor of the jury system, I think that those advantages still exist, that the safeguards that are contained in the jury system are still necessary. One of the defects, as some one has suggested, is in the general manner of selection. I believe we have nearly arrived at a perfect system. That is, at least that there is no possible system of either making it a profession or taking it from certain classes. However, by reason of my experience, and not being an Anglo-Saxon, and by reason of the stamp which I bear, the stamp of quality, "Made in Germany," I might call attention to something that we might learn from Germany. We have there in their Courts, what is called a Court of Commerce, to which are referred all questions between traders, between commercial men. Now there is no question about it, if you select twelve men at random, out of those who enter into industrial

and agricultural communities, upon a complicated commercial question—that is, simply carpenters, bricklayers and farmers, they will not be able to follow the evidence in such a manner as to be able to decide from the evidence as well in that particular case as twelve merchants, on commercial contracts of bookkeeping; they should know something about it. That is exactly what is done there. In that class of cases the court is presided over by a man learned in the law—a judge. Whether it is twelve men or not, I don't know, but they determine the question the same as our jury does here. As pointed out in the able paper here, it is difficult to make any improvement which requires any change, but improvements do come, nevertheless, and it would not be so very difficult to at least segregate certain classes of cases and say they should be decided by jurors who are experts and better able to decide that class of cases. They would be better able than a judge would.

MR. HEUSTON—I wish to express my appreciation of the learning expressed in that paper. I am not going to give any opinion or debate the question at all. It has been demonstrated by that paper that the jury system which we have today is not what it was at its origin, but has almost completely changed during these centuries, and it is still changing, and in the interest of science, I would like to take this occasion, when so many are present, leading attorneys of the state, to get a little information, and I wish to move this body to express its sentiments, that the last change in the jury system, by which a verdict may be agreed to by ten members instead of twelve, therefore completely overthrowing the old theory of unanimity, be also extended to the juries in the Federal Courts. Understand me, I am submitting this for the purpose of bringing out the sentiment of this body, to report a recommendation on the part of the State Bar Association, which implies that the change from unanimity to ten men in rendering a verdict in the State Court has been a success, whether it has or not. I am not going to debate. I hope some gentleman will enlighten us on that subject, but I am assuming that it has been a success, and that this State Bar Association is ready now, after a thorough argument, to recommend it to the authorities, which of course, it may

never reach, but nevertheless to express in its minutes a resolution that ten men may make a verdict in the Federal Court.

MR. GRAVES—Second the motion.

MR. BRONSON—I think that would require a constitutional amendment. I think we would be unable to do that. I understand the authorities so hold.

MR. HEUSTON—I mean, Mr. President, that we recommend it to the United States as a constitutional amendment. I think we ought to go on record that we believe, if we honestly think we do, that the change has been a good thing. I would like to see it expressed on the minutes, and I think it is certainly in order for this body to express a resolution, notwithstanding it may require an amendment to the constitution.

THE SECRETARY—I have just this suggestion to make: Mr. Robertson wished also the selection of juries in the State Courts, and I think we should recommend the selection of juries in the Federal Courts to be in the same manner as in the State Courts.

MR. HEUSTON—I am willing to incorporate that sentiment.

JUDGE CROW—Aren't we treading on rather dangerous ground? Isn't that a suggestion to Congress that if you want to make good laws, you must look to the Legislature of the State of Washington?

MR. MUNTER—I believe I have more of an excuse than Judge Crow, to speak my gratification to tell the people what a good thing the legislature of this state can do.

MR. RICHARDSON—The sentiment expressed in this motion or resolution would require an amendment to the constitution of the United States. We should hesitate to make an amendment to the constitution. I believe in the constitution of the United States. I have sworn several times to obey and support it, but people of the United States have a right to change the constitution, and if any member of this Association believes in this principle, there is no reason why he ought not to say so. Now, I believe in the principle of a less number of jurors rendering a verdict. I have taken no part in the general discussion, because I could see by the drift of the opinion expressed that there was no danger of the abolition of the jury system. My

experience with the bar and with the bench has convinced me that the jury system is the only practical system of administering justice in this country. I am unanimously in favor of the trial by jury, and there is one defect in our jury system which is a serious one and which requires amendment, and that is a requirement that even ten of the jurors are unnecessary to a verdict. I defy any gentleman present to give us a real good, practical, common sense reason why eight of the ten should not render a verdict, and I am in favor of making a resolution that even eight may render a verdict in either the United States or State Courts.

Now the suggestion made by Judge Crow that because this was simply a measure adopted by the Legislature of the State of Washington that it might be presumptuous in us to recommend it on that account. No; we recommend it because it commends itself to our judgment as a most just way to reach a verdict, an honest verdict in the trial of a case. I am in favor of the resolution. I am willing to say, however, that I would be willing to go much further, and recommend that eight men render a verdict in all cases, both civil and criminal.

THE PRESIDENT—The question before the Association is as to the sentiment in relation to ten jurors rendering a verdict. The result of your vote will be either for the recommendation to Congress, I suppose for an amendment to the constitution so that ten jurors may render a verdict in the Federal Courts, or against it. Those in favor of the motion will say "Aye." Those opposed will say "No." The Chair is in doubt; those in favor of the motion will please rise. Motion carried.

THE PRESIDENT—The other part of the motion is the recommendation for the adoption of the state practice in the selection of jurors in the Federal Courts. Motion carried.

MR. CONDON—Mr. President, I would say that I believe that the purpose has already been accomplished when it is reported that we do approve our state law making a change in the jury system and that we recommend it to be extended to the Federal Courts—to simply print it in our record. I doubt if it will be really wise to go any further than that. I simply express my personal opinion, and that it simply be printed in

our record so that any man can tell that the State Bar approved of that idea.

THE PRESIDENT—It will be the duty of the Secretary to communicate it to the delegation in Congress.

I think that Mr. Bruce has read here a very able paper; no ordinary paper would have brought out the discussion which has been carried on here this afternoon. I think he is entitled, as the mover of the debate, to close the argument.

MR. BRUCE—When I attempted to gain the recognition of the Chair, it was to claim that the result of the vote just taken, recommending to the Federal Judiciary the state statute authorizing a verdict by less than twelve jurors, vindicated everything I said about the jury in this paper. I only wanted to say that my Brother Graves, Brother Wooten and Brother Roberts this morning in advocating the reform relative to instructions to the jury, vindicated all that I said about jury reform, and they went farther than I did, and said that the jury didn't understand what the instructions were and what the evidence was.

I have never been hurt by being criticized, thought the inference thrown out that I was in the primary class, makes me a little resentful. I have practised before the jury a great many years and am very well satisfied with the percentage of verdicts I have gained and the size, but the real idea of this paper, I think, was overlooked by the emotions of the gentlemen who attempted to criticize it. The idea, I know, is expressly set forth that the abolition of the jury system would be revolutionary, but the change is constant; it is coming and we can't stop it. You might just as well talk about stopping the tide, as talk about stopping the progress of jurisprudence, and the man who comes up here today and talks about the impossibility of improving the jury system, will learn that changes must come. Now it seems to me so. He is learning the greatest questions of the day are on the equity side of our courts, and that is because that is a more comprehensive system and it deals with facts, and restrains individual action and liberties,—rights that the jury system can never reach, but we at least ought to be willing to improve the jury system, and I would be perfectly

willing to leave it to my Brother Graves or to Brother Robertson or to anyone who coolly sits down and analyzes conditions, whether or not juries carefully selected are apt to be more careful in their verdicts than jurors selected in an easier way. No man here disputed that point, but suggested more care in selection of the juror; now that selection hadn't ought to stop on the examination of legal requirements; it ought to go to his character, his intelligence, what he knows about the subject that is to be litigated, just as my friend over here advised and just as this other friend over here has advised, and it is coming. We have got to the verdict rendered by less than twelve of the jurymen and when the majority verdict will prevail, it won't be a question of eight—it will be a question of seven or even less, and a majority of three will render a verdict.

The question I wanted to get before you, is what is the best and most expeditious way of reaching that result.

THE PRESIDENT—The next order is the report of the Committee on Commercial Law.

THE SECRETARY—Mr. President, Judge Joiner has referred the making of a report to some other member of the committee, and I have been asked to have it go over until tomorrow morning, and the same way with the report on Uniformity of State Laws. Mr. Sheppard said he would be here.

MR. PRESIDENT—Gentlemen, during the noon recess I received a communication from the committee appointed in Oregon. It had some reference to a meeting to be held on the 10th day of August at Portland, at which time they are to have a number of leading lawyers of the state, and suggesting a Pacific Coast Bar Association be formed and inviting us to be present. I will ask the Secretary to read the communication.

Communication read.

MR. PRESIDENT—I think it would be proper for the Association to pass a resolution, at least in recognition of the notice that has been sent us.

JUDGE CROW—It strikes me that an organization of this kind on this Coast could not be other than a good move; it seems to me that some action would be proper, and I therefore move you that it be the sense of this Bar Association that action along

the lines of organization of a Pacific Coast Bar Association should be taken, as proposed.

MR. PRESIDENT—I would suggest that Judge Crow reduce that to writing, and the Secretary forward it to the Secretary of the Association named.

After an extended discussion it was unanimously voted to accept the invitation of the Oregon Bar Association, and approve the formation of a Pacific Coast Bar Association. The Secretary was instructed to so notify the Oregon Bar Association.

MR. DEWART—Tomorrow will be the election of officers, and I would like to move at this time that the President appoint a committee of three to nominate officers for the ensuing year. Seconded.

MR. GRAVES—I would like to know what is the reason for that—what is the necessity for it. If there is any necessity, reason or precedent for it, why we might probably follow it.

MR. PRESIDENT—I will ask the Secretary what the by-laws say on that.

SECRETARY—I think there is nothing in the by-laws as to that.

MR. PRESIDENT—I suppose the motion is made in pursuance of the custom of the American Bar Association in that respect.

MR. DEWART—Yes, a standing committee, I believe, of the American Bar Association. This is a matter of large importance and usually conduces to much better working, and we think it is a very desirable thing to introduce into our Association. It has been done before. Motion lost.

Adjournment was taken to 10 o'clock a. m., July 7th.

SECOND DAY

MORNING SESSION.

MR. PRESIDENT—I will make an innovation in the proceedings today, inasmuch as we have partially succeeded in the invitation to have members of the Supreme Bench attend the session, and I think the Association should extend its thanks to those members of the Supreme Court who have attended, and we will ask them to briefly respond to this welcome. I will first call upon Judge Root.

JUDGE ROOT—I do not know why you should insist upon “age before beauty,” in this case, but as that seems to be the order, I desire to say, Mr. President, that it has always been a pleasure to me to join these gatherings, and as you know, for many years past I have been present, except when I was unable to do so.

I firmly believe in these meetings, and believe they are a good thing for both the bench and the bar. The older I grow, the more I realize that the interests of the bench and the bar go hand in hand, and the better the understanding between them, the better it is for both. I was gratified this morning when someone told me of the action taken here yesterday with reference to the proposal that comes from the Oregon Bar, of forming a Pacific Coast Bar Association. I think it a wise and very proper thing on the part of this Association to indorse that movement. We all know the wonderful changes taking place in the Orient, and the last few years have brought changes to the whole world, and this Coast is to be more closely identified with those conditions than other parts of the world, and in the results of this changed condition, the legal fraternity will have more to do

than any other class of people, and the people have now turned to the legal profession as their leaders—as the men who shall take hold of these matters. It seems to me a happy idea that the members of the bar of the entire Coast should become better acquainted, one with the other. Now we all know that there are very able lawyers in California and Oregon, and other neighboring states possess able attorneys within their bounds, and yet personally, we are unacquainted with many of them, and I think this movement will be the means of bringing us together and giving us an understanding of the needs and the questions of importance to one another. It will be a place where, conveniently, the lawyers may meet and discuss these great questions that are peculiar to the Coast, and I believe it is a wise idea; not that it should in any way interfere with the American Bar Association, but we will have the benefit of these meetings right in our own midst, so to speak, in our own home, where we should have them. Therefore, I desire to commend the position taken by the Association here yesterday.

And as far as this session is concerned, I am informed that you had an interesting meeting yesterday, and believe you will today, and I am glad to be here, and in that behalf I know I speak for all the members of our Court in trusting that a perfect understanding shall at all times exist between the members of the bar and the Court. We feel that our work depends much upon the assistance of the bar. An industrious, honest, courteous bar lends great aid to the Court.

I am glad, Mr. President and gentlemen, to be here.

MR. PRESIDENT—In calling upon Judge Crow, I will say that this was in mind from the beginning, but it was postponed so that we might have the pleasure of hearing from all the judges at the same time.

JUDGE CROW—Mr. Chairman, you heard from me once or twice yesterday, and it is a little unfair to ask me to speak on this subject, after Judge Root has so well expressed the sentiments which we all hold towards this Association. I am here among my own people, and although residing on the western side of the state, Spokane is to me, of all places, the best city in the State of Washington, with all regard to our friend, and

as long as I am in this state, will be my place of residence, although I am to be absent at least for a portion of the time.

Mr. President, I concur heartily in what Judge Root has said in regard to the feeling of the Court, of which I have had the honor for a short time to be a member. I know also that we have a feeling of deep interest in the State Bar Association, and as Judge Root has suggested, I believe there is a universal desire on the part of the Court to have a full and complete understanding, a harmonious feeling with the entire bar of the state, and I know the other members of the Court regret their inability to be here. It is perhaps unnecessary for me to say that they are very busy and are trying to put themselves in a position where they can get a little rest in the summer time.

In regard to the bar, Judge Root has suggested that the bar can be, and is of very great assistance to the Court, and I never knew how much truth there was in that statement until the last few months of my experience. I believe as a rule, it is almost a universal rule that the bar of the State of Washington that practices before that Court, that they are fair, honest and candid in the manner in which they undertake to present their cases to that Court. My attention has been especially directed to that fact, and it is a very rare occurrence for an attorney, either in his brief or upon the oral argument to the Court, to make what he is conscious of making, a misstatement, and I think it is evidence of the very high standing of the members who practice before that Court. Now that is as it should be, because if the business of the Court is transacted along that plane and with that view, better results can be obtained. We all know that the results are not what is desired; we all make mistakes, the members and the Court.

I am very glad to be here, Mr. Chairman; I am here at home, among members of the bar with whom I have practiced for fifteen years in this city, and I believe in that time no man ever received more universal kindly treatment than I in all the time I was here and therefore it is especially pleasant for me to be here at this time with you.

SECRETARY—I will say, Mr. President, that I have several communications from judges of the Courts and members of

the bar regretting their inability to be present, and many others in person have told me they were sorry they could not be here. I have just received a telegram from Mr. Geo. Ladd Munn saying he could not reach here and that he had mailed his paper and requested it to be read.

MR. PRESIDENT—In regard to the paper of Mr. Munn, it hasn't arrived, so I assume that we will have to forego the pleasure of having it read. (See Appendix for Mr. Munn's paper.)

There is one subject that has been left off the program through oversight, and that is the report of the Committee on Obituary. Arrangements have been made by the committee for responses from the different localities where members have died since our last meeting.

I will call on Mr. Dovell, of Seattle, on the death of Judge H. G. Struve. (For remarks of Mr. Dovell see "In Memorium.")

MR. PRESIDENT—Gentlemen, I presume all the members of the bar have heard of the death of D. J. Crowley. He was required, on account of ill health, to retire from practice a few years ago, and those of his friends who remembered him with such kindness, were shocked to hear of his death last winter. I am going to call upon his old friend, M. F. Gose. (For remarks of Mr. Gose see "In Memorium.")

MR. PRESIDENT—I will ask Mr. Avery to speak of the late John R. McBride, a member of the bar of this city. (For remarks of Mr. Avery see "In Memorium.")

MR. PRESIDENT—I will call upon Judge Quinn to make a few remarks upon the life and character of the late Geo. M. Foster. (For remarks of Judge Quinn see "In Memorium.")

MR. PRESIDENT—Judge Root will address us in memory of the late Judge Osborne. (See remarks of Judge Root in "In Memorium.")

MR. PRESIDENT—I will call upon Mr. Gilbert to favor us with a few remarks on the late Ellis G. Soule. (See remarks of Mr. Gilbert in "In Memorium.")

MR. PRESIDENT—Mr. Bronson has consented to say a few

words in memory of late Herbert B. Huntley. (For remarks of Mr. Bronson see "In Memorium.")

MR. PRESIDENT—On the death of Secretary Hay, I think, without any motion, I will appoint Mr. Condon to prepare a resolution to be submitted this afternoon. We now come to the regular program. The first is the report of the Committee on Publications. (See resolution, "In Memorium.")

SECRETARY—There is no report, and in that connection I think that committee does not understand its province, probably. I think it is the province of that committee to know the new law publications and discuss them. I think they had an excellent chance this year to take up the delay in the publication of the Session Laws.

MR. PRESIDENT—We will now have the report of the Committee on Uniformity of State Laws.

The Secretary read the report as follows:

To the Washington State Bar Association:

Your Standing Committee on Uniformity of State Laws respectfully submits the following as its report for the year 1905:

Interest of the Bar as a body or of any considerable number of its members in this subject first found expression when the American Bar Association was founded in 1878; for one of its objects is stated in its constitution to be "to promote the administration of justice and *uniformity of legislation throughout the Union.*" But nothing was done to carry out this object until in 1889, when that Association at its annual convention created a committee on this subject whose duties were to compare the laws of different states on certain topics and recommend measures for their uniformity. Acting under the initiative of this committee, the state legislatures began to pass acts for the appointment of commissioners for the promotion of Uniformity of Legislation in the United States. The New York act passed in 1890 was the first. Year by year other states have joined in the movement, until acts of this character in nearly identical terms have been passed by thirty-six states and two territories. The latest state, so far as our information goes, is Washington. By Chapter 59 of the Session of 1905 the Governor was authorized to appoint three commissioners to promote such legislation; and he has appointed Charles E. Shepard and Alfred Battle, of Seattle, and Ira P. Englehart, of North Yakima. The first three sections of this act are identical with the like provisions in the statutes of other states. The fourth section contains a provision which is prob-

ably unique, but in view of the distance of this state from the localities where the annual conferences of the commissioners from all the States are usually held it is a prudent check on excessive expense. After providing (as is done in so many other instances when lawyers are called on to work *pro bono publico*) that the commissioners shall receive no compensation, but shall be allowed their actual traveling and other necessary expenses in the discharge of their duties, it declares that only one commissioner may attend the conferences out of this State once each year at the public expense, and that such commissioner shall be designated by the majority of the Board or, if they cannot agree, by the Governor. There is fortunately no prohibition on any commissioner flocking by himself and going to an eastern watering-place or elsewhere to attend these annual conferences on his own motion and at his own expense, if his zeal to unify and standardize the legislation of these United States will not permit him to wait his turn. Mr. Shepara has been designated by his colleagues to attend this year's conference, which will be held at Narragansett Pier, beginning on August 17.

We consider this a fitting occasion—since our State has just joined in this movement—to place on the records of your Association a brief review of its results to the present time. In fact, the effort to assimilate not only the laws but the *law* of all the states with each other on sundry important topics and on large branches of the law was coeval with the foundation of our government and was one of the impelling causes to the Annapolis Convention of 1787. Gen. Washington was the head of a company to extend the navigation of the Potomac; and the plan proposed by him contemplated the union of the headwaters of the Potomac and the Ohio rivers. This led to co-operation between Virginia, Maryland and Pennsylvania towards a uniform system of duties, of currency and of trade regulations in general; and from that grew the plan of a meeting of commissioners from all the States on the general subject of uniform regulation of trade which resulted in the Annapolis Convention. The “more perfect union,” which was there embodied in the Federal Constitution, largely consists in the uniformity of law within the range of Congressional legislation and of the jurisdiction of the Federal Courts. Witness the great subjects of currency, banking, coinage, tariff and other Federal taxes, bankruptcy, public lands, mining, navigation, patents. All this, however, is apart from the present movement towards uniformity of law on certain other subjects which are solely within State jurisdiction; and is mentioned only to show the benefits of such uniformity wherever local interests or peculiarities do not conflict with it; and to show also the deep-seated

necessity for and sentiment in favor of uniformity on all subjects of common interest.

This movement, under the guidance of the American Bar Association, has taken the official form of annual conferences of the commissioners of the several States, held just before or after the annual meeting of the Bar Association and at the same place. The first two conferences were held in 1892, and one has been held annually since then. The coming one will therefore be the fifteenth. Several states (we are unable to say how many) have adopted the recommendations of the conferences on forms of execution and acknowledgement of deeds. Of late years the more important subjects of divorce, negotiable paper and sales have chiefly occupied their deliberations. Short acts on causes for divorce and divorce procedure have been recommended, but so far as we can ascertain have been adopted by no state. The object of the act on causes for divorce is to prevent *migratory* divorces, by prohibiting them in any State for any cause which was not a valid ground where the marriage was contracted. For instance, under such a law a husband who married and lived in Illinois could not colonize himself in Washington (as one such once did) in order to get rid of his insane wife, because Illinois does not admit insanity as a cause for divorce. In other respects there is no change. The main object of the act regulating divorce procedure is to prevent *fraudulent* divorces through insufficient notice of suit. In contrast with the reluctance of the States to co-operate on divorce (probably because the public conscience is not yet educated up to it) is the treatment accorded the proposed negotiable instruments act. This is now the law, in the identical terms proposed by the General Board of Commissioners, in 25 States, one Territory, and the District of Columbia. As any one knows who has had occasion to use it, it is an admirable piece of legislation—simple, clear, certain, succinct. If codification is ever going to succeed, and to supersede the existing tangle of statutes and case law on some large and intricate subjects, it will be by just such pieces of work as this—where the law of a given topic sharply defined is put into a draft which is criticised and hammered at, pulled to pieces and remade for two or three years until it gets unanimous consent of a body of lawyers from most or all of the States, and is sent with that emphatic approval to the State Legislatures.

It is proper here to call the attention of this Association to the method of work of the conferees at their sessions. A draft of a proposed act is prepared in advance by some lawyer or professor of law who is specially qualified, and is submitted to the conference, where it is debated in detail for days if necessary. In some important cases

the subject has been thus discussed two or three years. Finally it is adopted, that is, recommended to the State legislatures only when after all the debate and amendment it obtains a vote of substantial or actual unanimity. In one sense all this work is playing at legislation, because it is by a body which goes through the forms of legislation but has no power to *enact*. In another sense it is real constructive legislation, because it is by a body which has the power to *act*, that is, to do the arduous work of preparation. It is an almost ideal mode of legislation. Nothing is choked down the throat of a reluctant and incensed minority. No partisan politics or personal passions or interests beget a misshapen and monstrous offspring. In the still air of calm debate by men from every commonwealth of the nation, all by profession experts, the consent of all on some subject of common and lasting interest is embodied in a form of words every one of which has passed the searching scrutiny of every conferee. In every respect this process is the exact opposite of the actual course of legislation where such preparatory work has not been done. Of course each State is at liberty to adopt or reject the proposed act, or to amend and then adopt it; but after such preparatory work every State should adopt or reject it *in toto* and unchanged, because literal uniformity is the very thing aimed at; and so far this with rare exceptions has occurred.

The conference at this year's session is to consider a draft act on sales of goods; and following that the law of partnership, which has been successfully handled by a codifying act in England, will be dealt with.

CHARLES E. SHEPARD, *Chairman.*

STANTON WARBURTON,

B. S. GROSSCUP,

A. R. COLEMAN,

HAROLD PRESTON,

Committee.

Report adopted.

MR. PRESIDENT—The next order of business is the report of the Committee on Grievances.

Spokane, Washington, July 5, 1905.

To the President and Members of the Washington State Bar Association:

GENTLEMEN: Your committee on Grievances respectfully represent that no grievances have been brought to the notice of your committee and we know of no matters which require attention on the part of the committee.

M. J. GORDON,
CHAS. P. LUND,
E. PRUYN.

MR. PRESIDENT—It is gratifying to note, gentlemen, that the brethren have lived in peace and harmony. The next order is a paper by Mr. Harvey L. Johnson, of Tacoma, on "The Development of the Law of Labor and Labor Organizations." (See Appendix for paper by Mr. Johnson.)

MR. PRESIDENT—Gentlemen, the paper is before you for discussion.

MR. GRAVES—I think we all appreciate very highly the research shown in the paper just read, and partially understand at least, the amount of labor and ability shown in the compilation. There is one suggestion in this paper, however, that I am not in entire accord with; perhaps I attach undue importance to the words, but it seems to me there is in some portion of it a conclusion that the labor unions had become a great power in these United States; that through the Legislature they could secure the passage of almost such laws as they pleased, and that in this they had exceeded their right. I don't believe that this is true. There has been a great change, as has been shown by this most admirable paper, in the attitude of law toward labor—organized labor. Undoubtedly organized labor has been in some degree responsible for that. I think, however, that a healthy public sentiment has had much more to do with it. Organized labor is not an autocrat at the present time. It is fashionable in some quarters to speak of organized labor as a dictator, as demanding many things without regard to the right or justice of its demands. From the experience that I have had in the legislative halls of this state, I have found that wherever organized labor comes before the Legislature demanding anything, if it demands something that is inimical to special interests, to corporate interests, or that those interests consider inimical, that the labor organization goes down, and that the special interest prevails. In 1903 the Legislature of the State of Washington passed what is known as the "factory inspection law." In 1905 the special interests, in this case the lumbermen, came there demanding the repeal of that act, or at least its modification in important particulars. The labor interests demanded that the act should be untouched, and they soon found that they had no standing there at all; all they could

hope to achieve was a compromise so that they could lose as little as possible. That act was modified to suit the corporate interests. And so with other matters that the labor organizations ask. If I mistake not, political parties of this state have pledged themselves to the enactment of legislation asked for by labor organizations. I know at least one of them has uniformly placed in its platform a demand for the enactment of a fellow-servant law. That demand in this state is a particularly just and proper one. The Supreme Court of this state, following a broad and liberal policy, which has always actuated it in dealing with such questions, has done away with the doctrine first announced by Chief Justice Shaw in *Farwell vs. Railway Company*, in 4 Metc., and has given to those litigants who litigate their rights in the Courts of the state, as broad and liberal a rule with respect to the fellow-servant doctrine as need be asked for. On the other hand, the Federal Courts, following, as they needs must, the decisions of the United States Supreme Court, have pledged their allegiance to the doctrine of the *Baugh* case, 149 U. S. There are then, two conflicting decisions, one in the state, and one in the Federal Courts. Now it seems only just that that should be harmonious and that the legislative declaration of the doctrine of our Supreme Court shall be followed in the case of all persons whose cause of action come within their jurisdiction. This demand then, I say, was made by the labor union. It is one of the things which they have most insisted upon for the last few years. They have secured the larger parties, the great parties of this state to pledge themselves to the enactment of such a law, but the corporate interests have uniformly been able to defeat it at every session when it was introduced, and at every session overwhelmingly defeated. Now I say that that being true, that the labor organization and the labor union is not an autocrat. It is sometimes deemed to be, but subject to corporate efforts which can always defeat their efforts, and so it seems useless for them to attempt legislation against corporate interests if they can be defeated. It is true that the laws regulating the hours of labor have been held unconstitutional by the Supreme Court of the United States under the decision referred to by the President of the Association in

his address yesterday, but it was only announced by a bare majority purely divided on it. I for one, think that the advantage was with the dissenting judges, and think that it is only a matter of a few years that that dissenting opinion will be made the law of the Court.

MR. PRESIDENT—The next order of business is the report of the Committee on Juvenile Courts.

MR. SECRETARY—Mr. Douglass, the Chairman, has written that he was unable to attend to the preparation of a report, and asked Mr. Griffiths to attend to it, and he has presented a report which is as follows:

To the Honorable President of the Washington State Bar Association:

Your committee composed of Mr. J. F. Douglas, Mr. Joseph Shippen, Mr. M. F. Gose, Hon. S. J. Chadwick and Austin E. Griffiths, appointed by the Association to draft legislation to be presented to the last session of the State Legislature, commonly known as the Juvenile Court Bill, beg leave to submit the following report:

Your Committee prepared a bill modelled after the juvenile court laws of the States of Colorado and Illinois, with such changes therein as were thought desirable to be made in order to conform the same as much as possible to the laws of this State now in force, and through the courtesy of Hon. C. E. Vilas, this bill was introduced into the lower house and became known as House Bill No. 2 and is entitled "An Act to provide for the apprehension, trial, treatment and control of delinquent children under the age of seventeen years."

With some slight changes the bill as introduced by Mr. Vilas was passed and is now the law of this state. At the same time your committee prepared a bill of equal importance commonly known as the Adult Delinquency Bill. This bill was also introduced by Mr. Vilas and became known as House Bill No. 14, and was entitled, "An Act to provide for the punishment of parents or persons responsible for and contributing to the delinquency of children of the age of seventeen years or under." This bill was almost an exact copy of the law of Colorado upon this subject. A law like this one reaching and punishing parents or other persons found to be responsible for the offenses or delinquencies of children is regarded by all persons interested in juvenile court legislation as essential to the success of the Juvenile Court Law. Unfortunately this bill, after passing the lower house, failed to pass the Senate. To what extent there may be conflict between the provisions of the Juvenile Court Law and other legislation

of somewhat similar character enacted at the last session, can only be ascertained by lapse of time and judicial decision.

Your Committee was greatly aided in its work by the most cordial co-operation of other persons and of various clubs and associations in this State, especially should recognition be given to the aid received by your Committee from the Federated Women's Clubs.

After the law was passed, your Committee caused to be distributed to each Superior Court Judge in the State and to many other persons, copies of the most valuable pamphlets with forms therein prepared by the Hon. Ben B. Lindsey.

Your Committee appreciates the great importance of the subject intrusted to it, believing that it involves to a great degree not only the preservation of law and order, especially in large communities, but also the welfare of the young. It is recognized that the criminal class is recruited from the youths of the land, and it is recognized that many parents are unfaithful in the discharge of their duties to their offspring imposed by the laws of God and man. Boys and girls are cast upon the world to make their way prematurely and exposed to dangers and evils from which they should be protected primarily by parents and also by society. Observation and experience show that through wise and considerate judicial measures much can be accomplished. There is a valuable growing literature on this subject, that may be distributed in education and advancement of this humane purpose intrusted to this Committee. We solicit the co-operation of our brother lawyers and the continuance of active interest.

In view of the fact that House Bill No. 14 failed to pass and of its extreme importance as supplemental to any Juvenile Court Legislation, your Committee begs leave to suggest to this Association that to the same committee or to another committee be committed the work of presenting to the next State Legislature for passage either House Bill No. 14 or some other similar bill and for full consideration of this bill by the members of this Association. You will find attached hereto a copy of the same as it was passed by the House.

Respectfully submitted,

J. F. DOUGLAS,
JOSEPH SHIPPEN,
M. F. GOSE,
S. J. CHADWICK,
AUSTIN E. GRIFFITHS.

In the House.

By MR. VILAS.

HOUSE BILL NO. 14.

State of Washington, Ninth Regular Session.

Read first time January 11, 1905; ordered printed and referred to Committee on Judiciary.

LL

AN ACT.

To provide for the punishment of parents or persons responsible for, or contributing to, the delinquency of children of the age of 17 years or under.

Be it enacted by the Legislature of the State of Washington:

Section 1. In all cases where any child shall be a delinquent child or a juvenile delinquent person, as defined by the statute of this State, the parent or parents, legal guardian, or person having the custody of such child, or any other person, responsible for, or by any act encouraging, causing or contributing to the delinquency of such child shall be guilty of a misdemeanor, and upon trial and conviction thereof shall be fined in a sum not to exceed one thousand dollars (\$1,000.00) or imprisoned in the county jail for a period not exceeding one (1) year, or by such fine and imprisonment. The court may impose conditions upon any person found guilty under this act, and so long as such person shall comply therewith to the satisfaction, of the court, the sentence imposed may be suspended.

Report adopted and committee continued.

AFTERNOON SESSION.

2 p. m.

MR. PRESIDENT—The Association will please come to order.

MR. AVERY—In the matter of those who are invited to go with us on this excursion tomorrow, we want it understood that the Spokane Bar Association invites all the members of the bar who are attending this convention, and any other members of the bar. We want the lawyers all to be there, and so that there may be no mistake about it, I want you to understand that it is not confined to the State Bar Association. The invitation is

general, and all the lawyers, whether they belong to the Association or not, are invited.

MR. QUINN—If I am in order, I would ask the indulgence of the Association that I may be able to submit to the Secretary supplementary remarks as to the character and standing of George M. Forster.

MR. WOOTEN—Mr. President, I think in that connection, others who have made remarks would like to avail themselves of such an opportunity, and I move that permission be given to members who have submitted remarks, to extend their remarks in the proceedings and submit them to the Secretary. Carried.

MR. PRESIDENT—We have Mr. Mires as Chairman of the Committee on Publications with us this afternoon; his report was passed over.

MR. MIRES—Mr. President, I haven't conferred with the other member of this committee, and have no written report to make. In the first place, I don't know that I understand the scope of this committee's work, nor whether it is to be compiled of publications which emanate from this body or from other bodies. Now I knew very well that I had no *authority*, and I didn't suppose this committee would have much more than an individual; but I know somebody is derelict, and I would like to have everybody know that I think it, too. The last Legislature passed some laws—that is, it is presumed it did. We have had no reports yet from the officials; we ought to have had them a long time ago. If they did pass any laws, they have been in force a month without our knowing of them. I say I didn't know that this Association had anything to do with that; if they did, I want to make a protest right here as to the manner in which they delayed these publications. Somebody, I don't care whether it is the administration or who it is; there are some things I don't like either, about the publication of our reports. At the last meeting of this Bar Association at Seattle, there was a vigorous and strenuous argument made there by two or three members of the bar at Seattle, King county, that didn't appear in the record at all. That was the best part of that meeting and it ought to have been the best part of the record. I don't know who had the right to cut them out;

I know my committee were not consulted about cutting them out. I was designated also at that meeting to prepare some obituary remarks upon the late deceased C. V. Warner. I took some pains to prepare what I thought ought to go on record to be part of the history, and I find about half of that is cut out like half a pound of soap; the best part of it, I thought. Now I say I don't know who is responsible for this, Mr. President, and don't care. I know the Committee on Printing is not responsible for it.

If I knew of any way by which this Association could induce the hasty publication of the reports of the Legislature, I would now make a motion in that direction; but I don't know what we can do; I don't know what anybody can do, if the people can't do anything with them.

Now that is about all the report I have to make.

Motion made for unanimous adoption of the report. Carried.

MR. SECRETARY—I think I will have to rise in defense of myself somewhat, if you will give me just a moment or two. I don't know just what remarks Mr. Mires alludes to, but I would have been glad if the Committee on Publications had taken the preparation of the report out of my hands at the time of the meeting. Immediately after the meeting I made arrangements with the publishers to publish the proceedings; I handed the publishers the addresses and they were set up, but I didn't get the transcript of the proceedings until the 19th of October, though begging for it many, many times. The addresses had been set up all that time and the publishers had gotten mad then, and when the proceedings came they were in no hurry about setting them up, and it went on until February before I had received the proof. There were no addresses left out by me, as I handed in the addresses as they came. As far as obituary notices are concerned, there was a resolution passed that the addresses be reduced to occupy not more than one page to the memory of each deceased member, and it was reported on at that time, and I asked each person himself to do the reducing if he could, but the resolution instructed me to put it on one page and I couldn't do anything else.

MR. ROCKWELL—I move that a committee be appointed to find out if the best part of Mr. Mires' remarks were cut out.

MR. MIRES—I have made no indictment against any specific person. I see it is shoved over to some resolution now, but that resolution was unknown to me when I was called upon to prepare what I did prepare; I don't know where it lies. I notice now that there has just been a resolution passed here and carried, that members of the bar might revise their remarks, and I think it is proper, too, and in submitting their remarks to the Secretary, I notice that they haven't been trimmed down to a page or half a page, and they ought not to be either. As far as that is concerned, the verbal discussion over there at Seattle that I referred to has been entirely left out. The remarks of my friend Thompson haven't appeared at all; I don't know whether the stenographer took them down or not. No matter where the fault lies, I simply wanted to call attention to it.

MR. SECRETARY—I do recall that those remarks were left out, but not through my fault; some one had been jumped on particularly over there, and it was thought best to leave out those remarks. In this connection I wish to say that there is one thing that must be taken into consideration as to those obituary notices. The proceedings of last year cost the Association \$250. Well now our dues are only a dollar a year. There is only one other state in the Union that I can find that has as low as \$2, and therefore the proceedings have been cut down and edited very closely; but last year it was not done. It cost \$184 to print the book, and that was at very low rates; the average bids came in at over \$200. The stenographer's fees were large; I think his bill was \$99 and something; that was reduced to \$66 after some effort, and the postage on the book—it cost six cents a book to send them out to each state of the Union from a list made up long before I became Secretary; it was about \$30 for postage. Now we will either have to reduce the book or we will have to raise more money. At present I will say that there are about \$300 due us from members of the Association for back dues, and it will take about \$350 to run the expenses of the Association, or about that much, a year. I had \$17 on hand at the commencement of this meeting and have taken in \$172 since.

MR. WOOTEN—Inasmuch as this matter has been brought up by the Chairman of the Committee on Publications and the statement of the Secretary, I think most members present last session will understand to what portion the Chairman refers. There was somewhat spirited and strenuous discussion there as to some paper or address submitted by a member of the Association, and that was practically eliminated by the expurgating authority of the President. Now I don't know what authority the President of this Association assumes to expurgate the record of this Association. There is a committee supposed to have charge of this matter. Discussions provoked are supposed to be one of the things invited and one of the beneficial results of the meeting, and if after discussion the President or anybody else presumes to expurgate and censure that report, I think he does so without authority.

MR.—I move that our Committee on Publication be instructed that the publication of the proceedings of the present meeting of the Bar Association are to include a verbatim report of all matters that occurred, with the opportunity given to all those who have submitted remarks to revise and edit their remarks.

Seconded by Mr. Mires.

JUDGE CROW—I think that is a good move, but from the talk I had with the Secretary before he left Olympia, the difficulty is going to be a financial one. I think the difficulty of the Association is that we are running on a "Cheap John" basis at one large dose. I think if you want to make a success of this Association you will have to make an increase in revenue some way; I haven't paid my dues yet but I am going to. I am wholly in favor of this motion, and it seems to me if we adopt the motion it should be in anticipation of some move in that direction. The Secretary has worked hard for this Association; I have seen him daily in getting matters in shape for this meeting and in endeavoring to get the members out and seeing to these reports, etc., and it requires a great deal of work. He gives it a good deal of attention, and I think he has kept the expenses down to as close a figure as possible, and while I favor this motion, it will be with a view to increasing the revenue.

MR. PRESIDENT—I will say on behalf of the Secretary, I know the difficulty under which he labored. The Treasury was without funds, and a good many members didn't respond, through carelessness, and he had difficulty in getting the report from the outgoing officers, and it was one of much perplexity and embarrassment. The fact of the matter is that the Secretary has been the Executive Committee of this Association for the last year, and I think he is entitled to much credit and that he should be commended on his excellent work. The Executive Committee has not met at all, from circumstances over which there seemed to be no control, and we depended upon the Secretary to run this with a bankrupt treasury, and we hope a new leaf will be turned over for the ensuing year.

MR. HEUSTON—If this report is supposed to be a permanent record, and sent to the various libraries of the sister states, the various law schools, universities, etc., I doubt the wisdom of sending out a verbatim report of everything that is said here. I want to say that the average lawyer, and that means me, who makes an argument before that august body at Olympia—I mean the Supreme Court—does a whole lot better in his brief; and I will say in reference to this record, I am frank to say that all that has been said, or parts of it at least, and what I have said before this meeting, it might not all look first-class in an eastern university or in a state institution of our own ten years from now. I believe there ought to be some editing done.

MR.—I take issue with the last speaker. I don't believe, in the first place, the record of this Association is deemed to be a record before the Court, or that we are supposed to eliminate the lighter vein or the serious vein or any other vein that happens to come into this Association's meeting, but it does seem to me proper that the record should be made as it exists, in the first place, and that it isn't necessary to edit another person's remarks, either in person or substitute; the person making the remarks is deemed to be making them extemporaneously. Every man, of course, can take what he has said extemporaneously, and probably patch it up and make it look better to his own eye, and we would all be inclined to do so, but it is not necessary.

I move to amend the motion which is before the meeting, if it is in order, eliminating the right of any person to edit it or revise it in any way, shape or form.

MR.—No, I don't accept the amendment. I think gentlemen like Mr. Graves and Mr. Wooten, who have occupied a great portion of the time in our session in making remarks, would dislike to be deprived of the privilege of revising them and changing some of the sentiments they have seen fit to express.

MR. SHAFFER—I think Judge Crow has called attention to some of the conditions, and by the way, I am grateful for the complimentary and commendatory remarks that have been made in my behalf. I don't think that I have been criticized. I did the work the best I knew how under the conditions, and if that work was not right, it does not hurt me at all. I want to say that we have \$17 in the treasury now. If I had printed all the proceedings of a year ago, we would have been in debt \$80, as it would have cost \$100 and more. Mr. Thompson, I will say, who made the principal address that brought forth the remarks alluded to, last year requested that that ought to be cut out, as Mr. Peters informed me, and I think that was done. I know now that it cost a great deal of money to get out the report. If I had known, though, that the Committee on Publications had thought its province was to publish this report, which they have never done before, I would have turned it over to them.

MR. DOVELL—It seems to me that our record can be made less expensive if the member of the Association were permitted to revise their remarks before the record is printed, and thus have the record contain just what was meant to be said, without superfluities, etc., which will creep in.

MR. WOOTEN—I appreciate the very generous proposition of my friend Mr. Dovell, that persons might have the opportunity to change their remarks, but I am perfectly willing to stand by anything I said here, without revision, and I think that is the feeling of everyone in the Association. The financial difficulty is the one that should be met, and I will ask what is necessary to provide a better revenue for the purposes of the Association. It seems to me a dollar is entirely inadequate as

the amount of dues. I don't know of any other Bar Association that charges so small an amount. I think the members should pay at least \$3 or \$5; \$3, I think, is about as low as I ever heard of. The American Bar Association charges \$5.

And now in regard to the striking out of remarks; the Secretary makes the statement that Mr. Thompson requested the elimination of his address in order to eliminate the reply. Now whenever a member of the Bar Association presents an address and that provokes discussion, should he be permitted to run away from the reply? It is part of the proceedings, and this certainly is a matter that ought to be corrected, and whenever an address is presented here, it ought to be part of the proceedings, and any discussion participated in on a paper ought to be a part of the record of the Association. I believe the Committee on Publication ought to have a general supervisory control, because there are a great many minor matters that creep into the record that have no interest to anybody. Those things could be easily dropped out. But as far as the expression of opinion and discussion of matters of professional interest, that is the object of the organization, and ought to go to the public and the Association for what it is worth.

As to the financial part, when that can be reached, I will make a motion, if possible, to increase the dues.

MR. PRESIDENT—I understand that the object of this motion is to have it devolve upon the Committee on Publication, the supervision of our proceedings and to publish reports of our meeting, and permit those who have made remarks to revise them.

MR. ROCKWELL—I understand that was only as to obituary remarks. I move to amend that now, Mr. President, by making it apply only to obituary remarks that have been made here, that a man can revise them and have it printed.

MR. PRESIDENT—I hope you don't get too deep into parliamentary law here.

MR. MILLION—I want to make a motion that the committee pass on the whole matter.

MR. PRESIDENT—The last amendment was that they should

not have the right to revise. The question is that the privilege of amending remarks made before the Association, or papers submitted here, be not allowed. Are you ready for the question?

Amendment carried.

MR. GOSE—I would like to know now just how that stands.

MR. PRESIDENT—As I understand it, it does not apply to those remarks made extemporaneously here as to obituaries. The question is now on the original question as amended, and it stands in this way: The original motion was to direct the Committee on Publications to have charge of the publication of the record hereafter and to allow revision of remarks made here, and revision of papers read. The amendment has prohibited the amended motion so that no revision will be allowed, and the motion therefore stands, that this committee is to cause a verbatim report of the proceedings to be printed. Carried.

MR. WOOTEN—I would like to ask, as a matter of information, what is necessary to change the dues. Is it in the by-laws? If it is, what is necessary to change the by-laws?

SECRETARY—By motion.

MR. WOOTEN—Then I move, Mr. President, to get the sense of the meeting—I don't know what amount the meeting will be willing to stand, but that hereafter the dues be \$3 per annum instead of \$1.

MR.—I want to make an amendment that the dues be fixed at \$2. It seems to me, with the present membership that with that sum we would be able to cover the expenses.

MR. WOOTEN—Amendment accepted.

MR. PRESIDENT—Then the motion stands before the Association for amending the by-laws and fixing the dues at \$2 per annum. I will suggest on this matter, that from what little information I acquired during the non-performance of my duties for the past year, that \$2 will be quite sufficient to meet the expenses of the Association. Are you ready for the question?

Motion carried.

MR. MILLION—If it is in order, I move an assessment be levied for this year of \$1 to publish the report.

MR. PRESIDENT—The President thinks you are in order, and if any other member thinks as you do, he can second it.

MR. ROBERTS—The Secretary says there are now due \$300 from members in unpaid dues.

MR. PRESIDENT—A good deal of that probably never will be paid. The question is to levy an assessment on each member of the Association.

SECRETARY—Mr. President, I think a better way out of that would be to have these delinquent members notified and requested to pay, and then if there is not sufficient money, to levy an assessment such as would be necessary; probably we would not need very much. I make that as an amendment.

MR. PRESIDENT—The motion is, that first an effort be made to collect the back dues, and then if there is not sufficient money, that the Executive Committee levy an assessment sufficient to cover the deficiency, not exceeding \$1. Motion carried.

MR. PRESIDENT—We are compelled to pass over the paper on Community Property Law on account of the absence of Mr. Munn, and will call on the Committee on Federal Court Rules; the Chairman is Mr. Ira Bronson.

MR. BRONSON—I don't see any opportunity for pyrotechnics on the part of the committee, as Judge Hanford is entitled to the credit. The rules are based on the California Courts, and can be had from the Seattle Court, and those who may have use for them may obtain them from Judge Hanford in Seattle.

MR. DEWART—I move to amend the by-laws by adding a section that the President appoint a committee of four to act with himself for the nomination of officers for the ensuing year; these nominations not to be exclusive, but the Association to have the privilege of nominating also.

MR. PRESIDENT—I prefer to take the committee entirely from the body of the Association.

MR. DEWART—I make it a committee of five, then.

MR. PRESIDENT—The question is, that the President appoint a committee of five to make nominations for the ensuing year; a permanent committee?

MR. DEWART—I would say that that is the procedure of the American Bar Association, except that it seems best that we should leave the nominations so that others may be made, and the committee can arrange for the nominations at their convenience to better advantage. It often happens that a person is nominated on the floor, yet it is not the best nomination, and if you say anything, it becomes a personal matter, and we all hesitate to do that, and the committee can do what is best for the Association.

MR. ROCKWELL—What do you mean by a permanent committee?

MR. DEWART—That the committee be appointed at each session for this purpose. Motion carried.

MR. PRESIDENT—I think, inasmuch as the election is to occur shortly, that I will name that committee now, so that they will have an opportunity to make the nominations.

MR. ROBERTS—The standing committees are provided for by Article X of the constitution. The constitution may be amended, however, by three-fourths vote.

MR. PRESIDENT—The constitution provides for what, do you say?

MR. ROBERTS—Article X provides for the standing committees, and the effect of this is an amendment to Article X of the constitution, provided there are twelve members present, and three-fourths of them vote for it, and they are here, I think.

MR. PRESIDENT—I will name on that committee, Messrs. Dewart, Dovell, Root, Million and Heuston.

The next order of business is the paper on the provision of the state constitution relative to private ways of necessity, etc., by Hon. C. C. Gose, of Walla Walla.

Paper by Mr. Gose. (See Appendix.)

MR. PRESIDENT—The paper is open for discussion. Hearing no discussion, we will pass to the next order of business, the report of the Committee on Jurisprudence and Law Reform, by Mark A. Fullerton.

No report.

MR. PRESIDENT—The next order of business is the report

of the Committee on Separate Election Judges; the Chairman is Mr. E. C. Hughes, of Seattle.

THE SECRETARY—I don't feel like criticizing this committee, but they were notified to report. Mr. Hughes has written a letter in which he says he has nothing to report, and in view of the fact that there will be no election prior to the next Legislature, it would be as well to let it go until the next meeting.

MR. PRESIDENT—I will interrupt the regular order of business to give Mr. Stern an opportunity to make an announcement which I think the members will find to their advantage.

MR. STERN—Mr. President, the Spokane Amateur Athletic Club has suggested that they will be very glad to have any of the visiting members of this Association to make themselves perfectly at home in that institution. There came a far-off cry from Judge Warren at Waterville, rather an anomalous situation, evidently crying for water up there, and there came another cry of fire from Mr. Brownell from the City of Smokestacks, and if any of you gentlemen are in need of water, we have a beautiful tank over there, in which you can plunge to your heart's content. We will welcome you over there, and you can use dumb-bells or play tennis with our friend Remington..

MR. PRESIDENT—At the morning session we passed over the remarks of Judge Moore on the death of Patrick Henry Winston, with the understanding that that matter would be called up this afternoon.

SECRETARY—Just before that commences, I wish to say that Mr. Monroe has asked us to attend the convention of the Good Roads Association this evening at 8 o'clock.

(For remarks of Judge Moore see "In Memorium.")

SECRETARY—Because of the great number of eulogies that have been pronounced here today, I believe that those who revise their remarks, should be requested to reduce them as much as possible, or we will have a book of several hundred pages of nothing but eulogies. I am satisfied there is enough for 100 pages, and we ought to get it below that.

MR. PRESIDENT—That will come under the province of the new committee. This brings us to the election of officers for the ensuing year.

MR. DEWART—Your committee nominates F. H. Brownell, of Everett, for President; E. C. Hughes, of Seattle, First Vice-president; R. S. Ott, of Tacoma, Second Vice-president; A. G. Avery, of Spokane, Third Vice-president; C. C. Gose, of Walla Walla, Fourth Vice-president; C. Will Shaffer, of Olympia, Secretary; N. S. Porter, of Olympia, Treasurer; Delegates to the American Bar Association, C. H. Hanford, Edward Whitson and Milo A. Root; and that each Delegate have the right to select his alternate.

MR. DEWART—I will say that the nomination of Mr. Brownell for President was made on the understanding of the committee that the next meeting was to be held at Everett; and for the Delegates to the American Bar Association, that if any of those members think they cannot attend, that they say what substitutes be provided to represent the Association at that meeting.

MR. PRESIDENT—I will say, so far as my nomination is concerned, I know it will be impossible for me to attend, and perhaps it would be better to substitute some name.

MR. STERN—I move to substitute the name of Mr. Charles E. Shepard for that of Judge Whitson. He intends to be in the east at the time of the meeting of the American Bar Association, and will be glad indeed to represent us, I know.

MR. DEWART—I think it would be better that the substitution be made by the individual. If there are no other substitutions, Mr. President, I move the Secretary be instructed to cast the ballot.

MR. PRESIDENT—The President feels constrained to follow the motion of Mr. Stern, and is glad to do so, and have Mr. Shepard nominated.

MR. STERN—I know it is no disrespect to the President, and I would like to have him get the indorsement of the members of the Association if he is going. Motion carried.

MR. PRESIDENT—The motion, then, before the house is for the adoption of the report of the Nomination Committee, which will be tantamount to electing the men for the officers of this Association for the ensuing year. Carried.

MR. DEWART—The Secretary asked me to state that the committee purposely made change in the Vice-Presidents, because it was the feeling of a number in the Association that this rotation process was not the best thing for the Association, and so we have put in nomination practically a new set of Vice-Presidents, and did not mean by that that they should move up in that order next year. The committee deemed it best to change that rotation process which has been used largely heretofore.

JUDGE CROW—I think this has been a very good meeting of this Association, but there has been one feature here that has impressed me, and it has also occurred at former meetings, and that is that a number of the standing committees of this Association have failed to report. Now it might be that the chairman of the committee could not be present, but he could see that his committee sent in the report, and it occurs to me that it might be wise to suggest, in some form, probably by resolution, that the President of this Association appoint new committees if the ones appointed are not going to discharge their duties. I think something of that kind ought to be done. I have no desire to criticize former Presidents of the Association nor the committees. The committees, many of them, have been well selected, the personnel of the committees has been good, but perhaps in many instances they were not aware of the fact that they were appointed, and not in a situation to make these reports. If it is proper, I make a motion that it is the sense of this Association that the new President we have just elected, when he goes to appoint his committees, shall, as far as practical, confer with the chairmen of the various committees in advance, and see if they will not take up these duties, and see that the reports are sent in.

MR. STERN—I know that would be very agreeable to everybody, but unfortunately it would be impractical. I know that I personally sent word to every member, and I think the Secretary did also, and if you can't get a lawyer to attend to his duties on a committee of his own volition, it is useless to write him. It is almost impossible to get them to report on the committee. Mr. Shaffer can perhaps bear me out on that, as I made personal efforts to get reports and couldn't do it.

MR. MILES—The truth of the matter is, that if you don't ask a man to serve, you can't get a report. I have had a little experience myself. While I am on my feet, I want to enter a protest on the suggestion made here by the Nominating Committee. I voted for these candidates that were nominated, but I did it thinking they were being advanced as Vice-Presidents; that has been the law of this Association always, and I think that the First Vice-President should be advanced to President, and so on with the others.

MR. BRONSON—They had a sort of vested interest in these offices, the emoluments of which they are going to be deprived of.

MR. PRESIDENT—This concludes the regular program.

MR. ROBERTS—It occurs to me, from the remarks made this afternoon that the Secretary, Mr. Shaffer, has had imposed upon him more than his share of troubles, and I therefore move that the Association move a vote of commendation and thanks for his labors in our behalf. (And then some one made the remark that this was not permitted by the constitution.)

MR. PRESIDENT—It is against the constitution, I know.

MR. ROBERTS—Mr. President, didn't I understand that the constitution could be amended by a three-fourths vote?

MR. PRESIDENT—So it can.

JUDGE ROOT—I would like to say just a few words in behalf of the members of the Supreme Bench. Judge Mount thought he would be here if he could arrange matters so he could come. I have an idea he will be here this evening so as to be here tomorrow, but the circumstances were such that he couldn't be here at the opening of the Association, and he didn't know whether he could come at all or not. If he could be here he would, and he desired me to extend his best wishes for a successful meeting here and to tell all the boys that he would have liked to be here with you. As to the other judges, Judge Dunbar, as you know, a year ago was in ill health. and went on a vacation, and the result of that vacation last summer restored his health to a better condition than it has been in many years, and as the vacation helped him, he felt that he should go again this summer, and he went some days ago. The other judges were so encumbered

with their work that they felt they could not possibly be here. The most of them will be obliged to work all summer, as you who are familiar with the recent term of court know that we had 144 cases on the calendar, and in addition, a large number submitted on briefs, and it is expected that all these shall be written up before the term in October, and so you can see there is an immense amount of work for all the judges. Each one of them desires to take a little vacation this summer, and they felt it was impossible for them to come over here at this time, but their best wishes are for this organization, and they desired Judge Crow and myself to extend their best wishes for its success.

MR. MIREs—I am mighty glad that we have the best wishes of the Supreme Court. I have been attending ever since the organization, and it is a fact that we have never had the attendance of the Supreme Court. I am glad to see Mr. Root and Mr. Crow. These new members don't know yet why they should not attend. We never knew, before it was suggested to us that we had their best wishes. Judge Stiles attended once, Judge Hoyt once, and Judge Reavis once, and we know he went off the bench pretty soon, but I don't know why the judges of the Supreme Bench won't attend these meetings.

MR. STERN—I want to take issue with Mr. Mires, for I can remember that two judges of the Supreme Court attended a certain place in Seattle, when the Seattle Bar held a session, and they entered a few races and got beaten, and I think that is the reason they quit. But I think a better reason is that one of them didn't want to attend a banquet; he was down for a certain toast, and he substituted another man. Will Thompson was toastmaster, and when this man said "I don't know by what sort of a chance I have been substituted." Will Thompson said: "I beg your pardon, but we pay just as much attention to precedent as the judges." And it wasn't long after that we expected another judge, and he didn't show up, and another man was substituted, and Thompson said: "We pay a whole lot more attention to authority than you do."

I am glad Judge Crow and Judge Root came down here and make themselves part of the boys.

MR. PRESIDENT—I think the Spokane committee having charge of the arrangements have had that in view when they cut out the banquet altogether, and the members of the Association fell the obligations we are under towards the Bar of Spokane for the pleasures of this session, those we have enjoyed, and those which we know are in store for tomorrow, and if it is not against the constitution, I shall move a vote of thanks to the Bar of Spokane County. If it is against the constitution, the constitution is nothing between friends here.

Motion carried.

MR. PRESIDENT—A motion to adjourn is now in order.

Motion made and carried.

EXCURSION TO COEUR D'ALENE LAKE AND ST. JOE RIVER.

Saturday, July 8.

"The recreation of the body will not be wholly given over for the entertainment of the mind. On the last day of the meeting we will ask all members of the State Bar Association to be our guests on a trip by electric line to Coeur d'Alene City, thence by steamer up Coeur d'Alene Lake and the St. Joe River, through some of the most beautiful scenery of Washington and Idaho. Nothing that will conduce to the pleasure of this trip will be left behind. If there are any omissions they will result from ignorance—and there are several members of the local association who profess uttermost knowledge upon those things most necessary to the joyfulness of such an occasion."—*Extract From Letter Sent Out by Spokane County Bar Association.*

At 9 a. m. we left Spokane over the Coeur d'Alene electric line in a train of three cars. Upon reaching Coeur d'Alene City we were put aboard the beautiful steamer State of Idaho, the largest steamer on the lake. This lake is the highest body of navigable water in the world, and none are more beautiful. We were banqueted and feasted all day, and if there were any omissions the association was ignorant of them—and there were judges of the Supreme Court and Superior Courts of this state, and of the Federal Courts, and many practitioners, all veterans of such occasions.

IN MEMORIAM.

H. G. STRUVE.

FROM ADDRESS BY W. T. DOVELL.

Mr. President and Members of the Association: A full consideration of the varied incidents in the life of Judge Henry G. Struve would involve a reference to much of our territorial and early state history. He was one of those men who possess that mental power, character and strength which leaves an impress upon any community with which they have an association.

Judge Struve was born in Germany in 1837, and his family being one of some station, the surroundings of his youth were of culture and refinement. As early as sixteen years of age, he became attracted to American institutions, and determined to ally himself to those institutions, which to the day of his death he believed in, thoroughly understood and as thoroughly loved.

Shortly after coming to America in 1853, he made his way to California and began the search for gold. Though he encountered some success in this quest, he found no difficulty in enlarging his expenditures, so that any financial profit was ultimately devoured. Meeting with an accident which he feared might leave him a cripple for life, he began the study of law, was admitted to the bar in 1859, and in 1860 removed to Vancouver, Washington.

While in New York City and while in California, he had had some experience in journalism, and upon his arrival in Washington territory, he purchased the Vancouver Chronicle. In these critical times, he was always a fervent supporter of the Union and an uncompromising advocate of the policy of President Lincoln.

Turning his attention again to the practice of the law, he was elected District Attorney for the Second Judicial District, and after four successive terms was elected Probate Judge of Clarke county. In 1865 he was chosen a member to the lower house of the Legislature, and in 1867 was elected to the Territorial Council, where he served for three successive terms, presiding during one over that body.

Forceful in his character, of recognized legal ability, and enjoying the full confidence of his associates, it is doubtful if anyone ever exercised a more marked influence upon territorial legislation.

It is understood to be he who framed and introduced our present community property law, and his handiwork may be found in many of the statutes (notably those relating to procedure), which are still the law of our state.

In 1871 he removed to Olympia, the capital of the territory, and after a brief experience as editor of the Olympia Courier, was appointed Secretary of the Territory, an office which he held until the close of President Grant's second term.

In 1879 he took up his abode in Seattle, where he continued to reside, practicing law without interruption until shortly before his death. In various capacities he rendered public service. He was Mayor of the city of Seattle for two terms. He was Judge Advocate General during the period of martial law, which attended the Chinese riots of 1886. As reporter of the Supreme Court he published the last volume of Territorial Reports. He was elected a member of the Board of Freeholders, which prepared the first charter of the city of Seattle. For some years he was upon the Board of Education of that city, and for five years served as a Regent of the University of Washington. It is unlikely that any honor that Judge Struve had sought would have been denied him by the people of the territory or state, but he was essentially a lawyer, and though standing ready to perform any public service for which his ability and character marked him, he preferred to hold no office which would divert him from his profession.

It is entirely safe to say that the reputation of Judge Struve as a lawyer was surpassed by that of no one in the Northwest. This reputation he had earned because he made his knowledge exact and complete upon any subject he negotiated. He gave no expression to his judgment until satisfied of its maturity. These qualities gave to his clients a confidence which is the surest foundation upon which a lawyer's reputation may rest.

As a man he was sociable, patriotic and generous. His sense of humor made him pause as he went along to note the ridiculous in things, and this habit gave him a fund upon which he was wont to draw, though with discretion. He had a courtesy of manner which is attributed to a school unfortunately out of date. During all his actual life, no blemish was ever suggested upon his name. He had the respect of those who knew him, the love of those who came closer. He did his share of charity and more as he passed along; his friends were made the happier, his state was made the stronger for his living. Greater praise than this we may not bestow on any man.

D. J. CROWLEY

FROM REMARKS BY MR. M. F. GOSE.

Mr. President and Gentlemen of the State Bar Association: Mr. Daniel Joseph Crowley, son of Bartholomew Crowley and Julia Leahy, was born in Bangor, Maine, February 11, 1854, studied law at Nevada City, California, under Hon. Niles P. Searles, who later became Chief Justice of the Supreme Court of the state of California. Mr. Crowley was admitted to the bar in 1875, practiced law at Nevada City until about the close of the year 1879. He came to Walla Walla in 1880.

In 1891 he was united in marriage to Miss Sarah Lynch, who survives him. Shortly thereafter he removed to Tacoma, where he died on March 24 of this year. Owing to failing health he retired from the practice of law in 1901. He was a member of the convention which framed our constitution in 1889. He held no other public office in the state. He was averse to allowing his name to be used as a candidate for any public position. Although frequently urged to stand for positions of honor in the political field, he steadfastly refused to do so. He believed that there was a dignity in private citizenship equal to any official position within the gift of the people of the state.

It is therefore as a lawyer that he was best known. It was his good fortune and the good fortune of the territory and the state, that he came to the territory when its judicial system was in its formative period.

He was a big-hearted, big-brained man, simple and direct in his methods. He was self-reliant and tenacious of an opinion when once formed, but never dogmatic. His first opinion on the law was usually right, but in important matters he did not mature his view until after careful thought and exhaustive investigation.

He was modest in manner and seemed not to realize the scope of his talents.

His success at the bar, which was great, was due chiefly to his large natural aptitude for the law, his industry and his uncompromising honesty. In the ability to make a clean cut statement of either fact or law he probably had no superior in the state. Courts soon learned to rely on his ability and to trust in his integrity. Probity

was his pre-eminent quality. It impressed all who came in contact with him.

His mind was analytical, rapid, and usually reached the right and always the just conclusion. As an advocate he was forceful, logical and eloquent. His voice was pleasing, his manner attractive and his speeches always brief. He had the rare faculty of grasping and presenting the salient features of his case.

He always commanded the attention, respect and confidence of the jury. To the court he was respectful but insistent, to both opposing and associate counsel he was always courteous and considerate.

His career as a lawyer was an illustration of the adage, "A law proposition well stated is half argued." He had a never failing fund of humor which he used to advantage, and his courtesy, fairness, kindness of heart and high character endeared him to all who knew him. To the younger members of the bar, who were still groping in darkness, he was every ready to give words of comfort and assistance. His life was a benediction to the young men who came in close contact with him.

In temperament he was an optimist. He saw the best in everything. As a man and citizen he was one of God's noblemen.

Mr. Crowley was a lovable man. Those who were fortunate enough to know him well felt the noble influence of his life and example.

His sudden death was a great shock to his many friends throughout the state. Although dead, he still lives in the hearts of his friends.

In his death his wife has lost a noble and devoted husband, the bar a leader, the state a patriotic, high-minded, justice-loving, justice-doing citizen.

PATRICK HENRY WINSTON

ADDRESS BY JAMES Z. MOORE.

In the stirring times connected with our Revolutionary war there appeared a man, tall, gaunt and with an air of introspection and melancholy. He had essayed to be a scholar and failed, he had

essayed to be a country merchant and failed. He would not take to farming, the ancestral pursuit, but like the sages of ancient Greece, sought knowledge and enforced argument by asking questions. He seemed out of place in our colonial life, whose genius was action, rather than meditation, and was somewhat saddened because he had not found the calling or employment for which he was adapted, and his better and greater qualities were yet unknown to himself. The great discussion of the fundamental constitutional principles upon which the American demands upon the mother country were based, discovered this man to be possessed of bolts of eloquence and well-springs of wisdom and courage which startled the British Empire and are yet remembered by admiring and loving generations. He it was who shocked the loyalists when in the Virginia house of burgesses, he thundered out, "Cæsar had his Brutus, Charles the First his Cromwell, and George the Third"—"Treason, treason," shouted the courtiers, when the orator resumed his discourse and with a shake of his head concluded the period with the solemn suggestion that—"George the Third may profit by their example."

He it was who concluded a speech in the Virginia convention, of which it has been said, that for true eloquence it has never been surpassed, with the noble words, "Why stand we here idle? What is it that gentlemen wish? What would they have? Is life so dear or peace so sweet as to be purchased at the price of chains and slavery? Forbid it Almighty God! I know not what course others may take, but as for me, give me liberty or give me death!"

He it was in the First Continental congress, who began his services there in a speech which marked him as the first orator of the continent, in which he opened up the vista of our national unity and greatness when he said, "I am *not* a *Virginian*, I am an *American*." Now, need I mention the familiar, the honored, loved and revered name of Patrick Henry?

It will put to thinking those who maintain that genius is not transmissible, when it is known that our own Patrick Henry Winston is a lineal descendant, and named in honor of this great lawyer, orator, statesman and patriot.

Patrick Henry Winston was the most unique character in our social, political and professional life. He was a native of North Carolina, was born and grew to manhood under the slave regime, and was intensely southern. He never tired of painting word-pictures of the south, as it was in his boyhood, and of telling anecdotes illustrative of its many charming features and unusual and remarkable personages. He would have been happy to have returned to

North Carolina and to have spent the⁹ last of his life among the scenes and people that he loved. I think he was attracted to me because I understood the setting of his many word-paintings, that I knew the life he loved as well as he himself, and that I never wearied of listening to his delightful talks about the south. I was raised under precisely the same social influence that he was, the antebellum life of Kentucky being a part of the old south, was identical with that of North Carolina. The woods and water-courses, the home life, the brothers, the boyhood friends, the grotesque characters among the people, the beautiful and never to be forgotten maternal influences, the patient, refined and highly cultivated mother and mistress of the family, teaching the young negroes on Sunday afternoons morals and religion, just as she taught her own children, was part of early life which we had in common. Winston knew there was no one whose heart went out in tenderness to him like my own, as he painted with a brush dipped in life's brightest colors, those dear and familiar scenes of our childhood. He yearned for North Carolina and in all these later years he never talked to me that he did not at once enter upon this theme. As illustrative of this there appeared in Winston's Weekly a few weeks before his death under the caption, "Its a Far Cry," the following: "It never seemed so far from here to Albermarle Sound as when the frogs begin to croak and the shad begin to run." Then after dwelling upon some of the pleasures of North Carolina life he continued: "About the best dish in this world is roasted perch. The last the writer ate was at Capehart's fishery, in company with Governor Vance and a party of gentlemen. *That was a long time ago.* It makes one sick at heart to think of the old days. Its a far cry from here to Avoca or Terrapin point." Alas, it was so far a cry and so far a journey, that the weary spirit longing for the shades of well-remembered trees, the song of the well-remembered brook, the view from the well-remembered point out upon the ocean, and the smile of the well-remembered face, was never gratified in this life, and let us hope that this longing has been gratified in that life to which he has gone.

Patrick Henry Winston was a remarkable man. He had that divine essence denied the most of us. He was a genius. That peculiar mental structure which entitled him to be so classed, was as pronounced as the genius of Thomas Nast as a caricaturist, or of Henry Watterson as an editorial writer.

It is impossible to direct the life of another man, it is difficult even to influence our own. Circumstances which we do not make,

circumstances which we cannot escape—environment—direct and govern, and make or mar us all. But, if I could have directed Winston, he should have gone on the lecture platform, where his genius would have delighted, entertained and instructed, and where it would have brought him fame and money. I have heard many of the rare humorists of this country and especially of the south—Winston was the greatest of them all. I have heard Beecher and Tilton, Conklin and Blaine and the elder Voorhees, and Bryan and Towne and Watterson, and many of the other rare word-painters and great orators of this country, and do not hesitate to say that the oratorical genius of Winston took as rare and well-sustained flights as any of theirs. It was a delightful thing to hear him convulse an audience with humor, melt it with pathos, thrill it with appeal, and burst in upon it with a great bolt of common sense which carried conviction.

Mr. Justice Harlan once said to me, that with the old Virginians there was a tradition that in every group or gathering of men Washington was chief; if Washington was not present, then George Mason was chief. This celebrated man, who was a contemporary of Patrick Henry, said of him, "He is the most powerful speaker I ever heard. Every word he says not only engages but commands the attention, and your passions are no longer your own when he addresses them."

Dr. Archibald Alexander, a great Presbyterian divine, and in part a contemporary of him, said: "From my earliest childhood I have heard of the eloquence of Patrick Henry. On this subject there was but one opinion. The power of his eloquence was felt equally by the learned and the unlearned. No man who ever heard him speak on any important occasion could fail to admit his uncommon power over the minds of his hearers. * * * This power was due, first, to the greatness of his emotions, accompanied with a versatility which enabled him to assume at once any emotion or passion which suited his ends. Not less indispensable, secondly, was a matchless perfection of the organ of expression, including the voice, intonation, pause, gesture, attitude and indescribable play of countenance. In no instance did he ever indulge in an expression that was not instantly recognized as nature itself; yet some of his penetrating and subdued tones were absolutely peculiar and as inimitable as they are indescribable. These were felt by every hearer. His mightiest feelings were sometimes indicated by a long pause, aided by an eloquent aspect, and some significant use of the hands."

Thomas Jefferson, who heard the debate on the resolution against

the Stamp Act, wrote concerning it: "I heard the splendid display of Mr. Henry's talents as a popular orator. They were great, indeed such as I have never heard from any other man. He appeared to me to speak as Homer wrote." And in describing Edmund Pendleton, Mr. Jefferson said: "He had not, indeed, the poetical fancy of Mr. Henry, his sublime imagination, his lofty and overwhelming diction."

Who that has heard Winston does not recognize in these passages happy description of the leading marks of his oratory, as well as that of Patrick Henry? Mr. Mason says, every word not only engages but commands attention, and your passions are no longer your own when he addresses them.

Dr. Alexander recognizes not only the power of emotion in his oratory but the perfection of the organs of expression, including voice, intonation, pause, gesture, attitude and indescribable play of countenance. Mr. Jefferson speaks of his poetical fancy, his sublime imagination, his lofty and overwhelming diction.

I appeal to those who knew Col. Winston to know if his powers as an orator can be described without treating of the very elements which are here given as the characteristics of the oratory of the celebrated Patrick Henry. In the language of Dr. Alexander, on the subject of his eloquence there can be but one opinion. Its power was felt equally by the learned and the unlearned.

If he'd had the same great cause to steady him and to call out his latent force, it is not extravagance to believe that Winston's fame would have rivalled that of this most noble ancestor.

Winston was also a student, and a scholarly and learned man. He kept up his reading habits to the last, and few were aware of the extent and thoroughness and accuracy of his learning. Glimpses of this appeared in the newspaper, Winston's Weekly, to which he devoted his last energies, and from which I have just quoted. That little message from his head and heart came to us each week charged with more learning than will be found in most great dailies in many months. It bristled with learning, bristled with logic, was thrilling with eloquence, was awful in sarcasm, irresistible in humor, lofty in patriotism and was ever attacking abuses and promoting the general welfare. The city and county of Spokane and the state of Washington needed him. They will miss him. He was doing a great work, and I know of no one to take it up where it fell from his hands.

It is the fate of the humorist to have this quality overshadow nobler gifts, and those usually most prized by the possessor. Wins-

ton may be known chiefly as a humorist, whereas, he is entitled to be remembered as a man of unflinching courage, devoted patriotism, broad and accurate learning, able and brilliant in mental structure and as one endowed with the divine power of eloquence. But, while he was learned, brilliant, eloquent and humorous, it must not be thought he was defective in power as a reasoner. I know of no man who could more readily and thoroughly analyze an embarrassing and difficult situation in politics or law. And he would often startle you with the clearness and strength of his analysis and the cogency of his conclusion.

Like most men with scintillating and well stored minds, he was an incessant and delightful talker. In fact I could only get a word in edgeways occasionally, and hardly ever get a hearing unless I insisted on it. Then the Colonel, with courtly and charming politeness, would yield, and listen attentively. Nobody was like him and he was like nobody. He must stand out in the history of the community where he was known as his own distinct and original self. He will not leave that impress on his age that his genius and learning would have caused us to expect, because they were not applied to the public life of his age. The law, to which he devoted his life, is not the field for genius. It is the field for Tommy Traddles, not for David Copperfield. It is too conservative, too circumscribed, too fixed, and too inflexible. It is too much a pursuit of labor and detail. Genius needs to soar upon the eagle-pinions of unrestrained thought and fancy. Fame and fortune were not in the law for endowments such as his; its audiences are too limited, its subjects are too near the humdrum of every-day common-place life. Winston's mind was soaring over mountain and forest and ocean, constantly upon great world-subjects, grasping race-questions, international problems and the movements that affect humanity. His utterances were for the jury of all his countrymen, his thought for the court of all the world. No man was a more American American than he. Mr. Voorhees, who delivered a eulogy at his bier, said he loved justice; yes, he did love justice, and he loved his country, and he despised the cowardice which shirks public duty and makes us oblivious to our obligations to see that the noble institutions inherited from a noble generation are not degraded and undermined and made fit and ready for destruction.

The truth of what I now say about the genius and learning and patriotism of Winston will become more apparent as time passes. While the individual lives, rarely is anything conceded favorable

to his endowment, equipment or achievement; so that it must often have been observed by you, that it requires death to bring recognition of the great qualities of the living.

I remember in studying Greek history these lines:

"Homer living had not where to rest his head,
Seven cities claimed Homer dead."

So of our own John Paul Jones, whose revolutionary prowess, interpidity and achievements by giving a transcendent object-lesson to all American seamen, was the creative force in the characters of Perry and Decatur, of Porter and Farragut, and all the officers and men under him, lived without a home and died in a foreign city in poverty, was buried at the expense of a stranger, and now after more than one hundred years a great people, our own people, have sent a squadron from our navy to bring home his remains.

I cannot stop to philosophize upon this unlovable quality of human nature. Sallust, writing two thousand years ago, in opening his treatise upon the Jugurthine war, said: "*Genius humanum pronus atque obedientia ventri nascitur.*" And so the race of man has continued to be born and to be from that date to this. Education, enlightenment, civilization may ameliorate, but they cannot change his nature. We should do ampler justice to our living associates, and remember that a little encouragement may sweeten the sour life of some fellow traveller and will always sweeten our own.

It has often occurred to me that when a man has his passions under control, his judgment matured, his mind stored with learning, his path lighted with the lamp of experience, that he then was just ready to live, to accomplish the best of which he was capable. But great Nature says no, he is then just ready to die. And here we witness the execution of this inscrutable and inexorable law, by which our friend and brother in the fullness of his powers, in the maturity of his moral and intellectual forces has been required to cease to exist. None can escape this law, it is one of the conditions under which we live.

And now let us remember Patrick Henry Winston as a genius rare, with learning broad and accurate, with mind bold, aggressive and desiring the right and a heart full of all tender and human sympathies. Let us remember all his great, good and genial qualities and join in the prayer for peace to his ashes and repose to his soul.

GEORGE M. FOSTER

FROM REMARKS BY MR. QUINN.

Mr. President, and Gentlemen of the Bar Association: I do not like to hear lawyers make excuses, especially on occasions of this kind, but I am not much of a talker as a rule, and even in talking of an old friend who has departed this life I ought to have had some opportunity to collect and prepare my thoughts. It hasn't been three minutes since I was informed that I was likely to be called upon in this connection.

I have known George Foster as a lawyer for fifteen years, prior to his death, in this city. He was my friend from the start. He was every man's friend that would allow a good honorable citizen and lawyer to become his friend. He helped everybody that needed help, and especially do the members of the State Bar Association honor his memory because he was a thorough, earnest advocate of the institution.

In the court-room he was always an honorable adversary, yet always working in the interests of his clients honestly and honorably. It was a sad day when he became sick and was called away from the profession and the association of the Spokane Bar. I felt it as a personal loss and I would like to be able to narrate his history to this Bar Association, but under the circumstances I can only say that whatever he was called upon to do, either as a citizen or as a lawyer, he did well, he did honorably, and he received the congratulations of those whom he was called upon to represent. If, as lawyers, we would take as examples the industry in the profession as George Foster did, his vigor in the interests of his clients, his honorable conduct as a citizen, our profession would be much more improved to that extent.

I thank you, gentlemen, and ask to be pardoned for these short remarks in his behalf.

JUDGE RICHARD OSBORNE

REMARKS BY JUDGE MILO ROOT.

I have had but a moment's notice of this, and I regret it as I would like to have presented a little of the history of Judge Os-

borne's career, but I have not the data at hand to so do. I had known the Judge for perhaps ten years prior to his death, and I think that I speak the general sentiment of the Bar where he was best known when I say that he was highly appreciated not only for his ability as a lawyer, but for his undoubted honesty, both as a judge and as a man.

For some years he presided as a judge of the Superior Court of King county, and in the discharge of the duties of that position, I think it was never doubted that he brought to the determination of all questions that came before him, absolute honesty and a conscientious purpose; and I take it that this is one of the best things that can be said of any judge, that he administers the law fairly and impartially. Those who go before judges have the right to a righteous administration of the law and to fair and courteous treatment. Such I think were the sentiments of Judge Osborne, and the same character of conduct was found in his actions as a member of the Bar and as a citizen.

Like many others, during the hard times he met with financial reverses, but he did not give up; he did not become discouraged. He went to the north but was not overly successful, and returned to Seattle and entered the active practice. He was a man who, as a rule, was well liked by members of the Bar, whose honesty they had confidence in, and who tried to perform his duties well.

When a boy he entered the Union army and rendered brave services for his country. He was a member of the Grand Army, took a keen interest in its work, and was well thought of by his comrades.

I do not know what I can add to what has already been said. I regret that I did not have notice so that I might have made mention of some of the notable events in the life of this member of the Bar of King county who has been taken from us.

JUDGE MCBRIDE

REMARKS BY MR. AVERY.

Mr. President and Gentlemen of the Association: It is somewhat unfortunate that the gentleman who could have and would have, more than any other, come nearer doing justice to the memory

of John R. McBride, is not here to say a few words instead of myself. I did not know that I was to be called upon to say anything in regard to Judge McBride in his lifetime and to his memory, and it is unfortunate that one who was more intimately acquainted with him has not this opportunity and privilege. His late partner, Mr. Folsom, is not present.

While I did not know Judge McBride so intimately, and neither did I know his history in full detail, I do know what his reputation was, and to a great extent how it was earned.

Judge McBride was born in Franklin county, Missouri, in 1833. His father was a doctor and also a minister. I understand that he was related, through his mother's family, to President Jackson. He came across the plains in the usual way in 1846, and first settled at McMinnville, and later at St. Helens, Oregon. I understand that his father preached at these places and also followed the profession of a physician. Judge McBride, in 1852, went from Oregon to California overland, and, with a number of others who accompanied him, engaged in placer mining in the latter state. He returned to Oregon later and there studied law, but I have no information as to his preceptor or associates at that time. He became one of the organizers of the republican party in Oregon, ran for congress and was defeated. He ran for congress a second time in 1862 and was elected, going to Washington with a letter of introduction to President Lincoln from an old friend of the latter.

During his congressional career, Judge McBride was instrumental in the elevation of the late Stephen J. Field to the supreme bench of the United States. Upon the creation of Idaho territory, it is understood that Judge McBride was allowed to select the territorial officers with the exception of two or three whom President Lincoln knew and whose appointment he personally desired. He was held in very high esteem by President Lincoln, and, near the close of his term, was a guest at an informal function at the White House, which was followed by a small theater party composed of the President and Mrs. Lincoln, Judge McBride and another. On this occasion the party occupied the box in Ford's theater in which President Lincoln was assassinated two weeks later. It was upon the return of the party from the theater that President Lincoln informed Judge McBride that he had appointed him Chief Justice of Idaho and expressed the wish that he might make as good a judge as he had a legislator. The appointment was not only unsolicited, but entirely unexpected. He served four years as judge and wrote the first published opinions in the Idaho reports.

After his resignation from the bench—the date of which I am not advised—he practiced law in Idaho and finally moved to Salt Lake City, where he formed a partnership with the late J. G. Sutherland, the author of *Sutherland on Damages*, *Statutory Construction*, etc. It is understood that Judge McBride wrote certain chapters in Judge Sutherland's work on damages. The firm occupied a leading position in the profession for fifteen years, and, during this period Judge McBride tried some celebrated cases involving mining laws. He was, during this time, one of the leading members of the Anti-Mormon party in Utah; he was also a member of the Republican national committee from Idaho and Utah for seventeen years. He held the high esteem of nearly all the public men in those days, and was a close friend of James G. Blaine, and of the late Judge Field.

Judge McBride had in late years devoted most of his time to mining law, but had large experience as a general practitioner, and it is said that he has defended not less than twenty men charged with murder. At one time he had charge of the suits for maintenance against Brigham Young on behalf of one of his wives.

In the early nineties he was attorney for the Northern Pacific Railway Company in this city. He was usually on one side or the other of every important mining case pending in the vicinity where he lived.

He was naturally of a literary turn of mind and wrote an autobiography which was never published and which I have never had the good fortune to see. He was quiet, unassuming, and the character of man who undoubtedly makes a real success in any profession which he undertook.

Judge McBride probably stood as high with the people as any member of this Bar, or perhaps of the Bar of the Northwest. He was known by everybody to be a man of sterling honesty and integrity, of absolute fairness, and a lawyer who had few, if any, superiors. He had been fortunate in his association, as I stated before, with men of character and men of reputation, and in that degree he had the ability to give to others what he had gotten from them. I doubt whether the death of any member of the Bar, the local Bar, was more lamented than that of Judge McBride, and it is particularly unfortunate that I have not the ability to do justice to his memory. Many of you here present knew more intimately Judge McBride than I, but it is a fact that the passing of Judge McBride was a great loss to this Bar and this community. He was a gentleman, a scholar and a very excellent lawyer.

He who can leave a reputation such as Judge McBride left at his death, will indeed be fortunate.

ELLIS G. SOULE

REMARKS BY W. S. GILBERT.

I regard it as a solemn privilege, Mr. President, to pay a humble tribute to the worth of the late Ellis G. Soule as a lawyer and as a man, and I find my excuse, if any be needed, for speaking at this time in the fact that we were classmates together in the University of Michigan, and that probably my acquaintance with him covered a longer period than that of any one else present.

The news of his death came like a flash of lightning from a clear sky, so unexpected was it. In the prime of life and in apparently good health, he was stricken down. Death is an incomprehensible thing no matter in what form or at what time it comes. Truly has the artist and the poet pictured it as a dark and mournful figure—stern, silent and relentless. When a man has lived his allotted three score years and ten, when his hair is gray and his shoulders bowed with a life of honorable toil and work well done, we can understand in a measure why death should summon him to another world; but when, as in the case of Ellis Soule, death comes in the prime of life, almost, it may be said, at the very moment when he is entering upon his career of usefulness as a lawyer and as a member of the community, it is indeed beyond our comprehension.

Ellis Soule was a graduate of Northwestern University; later he spent three years at Ann Arbor where he secured his professional degree. His five years of practice had barely more than made good his start in the profession which he had chosen as his life work, and given promise of his future success. His years of preparation were behind him; his real usefulness among us had just begun when he died.

It is not true as Shakespeare makes Mark Anthony declare, that "The evil which men do lives after them," and fortunate it is that the human heart and mind are so constituted that the tears of grief we shed over the grave of a fallen comrade, blind us to all but the good in him. Ellis Soule, like all of us, was far from being a perfect man, but he had qualities which made him almost universally liked. It is right that we should recognize and commend these qualities in him.

His cheerfulness won him many friends. He met every one with a smile. He was universally pleasant, and no matter what storms raged within, outwardly he was beaming. He must have

made cheerfulness a habit, because through the hard years of a young lawyer's struggle to make a beginning—and that they are hard years, we all know—he laughed at obstacles and vanquished adversity with a smile. If we remember Ellis Soule for nothing else, let us remember him for his cheerfulness and kindly ways; for surely these are qualities which are foundation stones of character.

J. H. PARKER

REMARKS BY J. C. CROSS.

The person, the subject of these brief remarks, is James Hamer Parker, born in Orland, Maine, December 2, 1835, and who died at Hoquiam, in this state, on October 26, 1904.

Mr. Parker received his collegiate training at Hamlin University, and soon after his graduation entered into the active pursuits of his chosen profession, associating himself with Judge Wilder, of Red Wing, Michigan.

Mr. Parker, being desirous of going West, came out as far as Minnesota, where he was honored with the office of Judge of Probate for the county of Freeborn, in that state; and also with the position of County Attorney for the county of Goodhue, in the same state.

Sixteen years ago the deceased came to this state and located at Tacoma, where he invested the earnings of his youth in the lumber business and also practiced law. While there, Mr. Parker suffered financial reverses, and some six years ago he removed to Hoquiam, where the opportunities to regain what he had lost were more favorable.

As a lawyer, Judge Parker was an honest, energetic and industrious practitioner. To practice with him, or to practice against him was a privilege enjoyed. Being a man of broad learning, keen intellect and pleasing appearance, it was a pleasure to hear his forcible presentations and logical arguments. He was a man who loved the profession, and who worked unceasingly and undauntingly to impress the soundness of his position, but never was he found advancing the cause of the unscrupulous or the unjust. To

blast the attempts of some oppressor was to him a privilege, and the duty was performed without halting for recompense.

As a man and a citizen, Mr. Parker was a most deserving and estimable character. He never sought great prominence, yet he was a public spirited and patriotic citizen, and his influence was always felt for good government, and for honest and economical administration of the public weal. In the community he stood for honesty, progress and advancement, and took a delight in all that seemed to promote these objects.

In business Mr. Parker sustained an unsullied reputation and an unstained and spotless character. He gained and maintained the united confidence and esteem of those with whom he dealt. His word was as good as his bond, and his honor was good where his writing was not. Though forced by misfortune to forego many of the luxuries, and sometimes the real wants of life, that he might repay them to whom he was obligated, yet he did so cheerfully, manifesting in his every action and attitude his sterling qualities as a man of business.

He was a member of the Methodist church for forty-two years, and as such was honored with almost every position open to a layman in that denomination. His church lost in him a loyal and true-hearted worker. His spirituality and genuineness of character made him a man of even life and influence; a quiet, but great force in the circles of his beloved church. To him religion was not a form, but a life of highest honor, kindness and usefulness, and the beauty of his character was manifest to all who knew or came in touch with him.

It was at his home that Mr. Parker was most felt. As a kind and loving father of respecting and obedient children, he delighted in everything that would make a cheerful and happy home, and in every plan that would advance the well-being of each member of his devoted family.

Though the living embers of the physical man are known to us no more, yet the living virtues of his well spent life live with us, and his quickening spirit should incite us to seek the possession of those immortal qualities which were his, so that, when we shall come into the dawn of immortality, we may look back upon the mortal past with the comforting assurance that we leave behind, at least some of the proud possessions dedicated to the world by him of whom we speak. Though gone, his life will live in the

lives he touched; and if we could hear the voice of this silent dead, he would no doubt reiterate to us the self-evident admonition:

"Remember, Brothers, as you pass bye,

As you are now, so once was I;

As I am now, so you must be,

Prepare for death and follow me."

J. C. CROSS.

MARSHALL P. STAFFORD

OBITUARY BY ROBT. MUIR.

Marshall P. Stafford was born at Battleboro, Vt., October 14, 1845, and died suddenly at Bellingham in December, 1904, at the age of 59. To enable him to enter Harvard he prepared himself at the Latin school at Boston, and he graduated from Harvard in 1866.

Mr. Stafford practiced law in the city of New York for some years, and his health having given way, he was recommended by his physician to try a change—to seek new scenes and environments, and in consequence he came to Seattle and later settled in Bellingham. He was of a studious nature and of a retiring disposition. Although in the midst of law practice he found time to, and did keep up his studies in Latin, Greek, French, German and Italian. It was a pleasure to listen to him in discussing any subject, and observe how he brought his vast stores of reading to assist him in his views. In all his dealings he treated his opponents with courtesy, and invariably conducted himself as a gentleman. He was gifted with a mind which swiftly and accurately comprehended the import of an argument, and was keen to see the weak point in his opponent. After coming West he never made any serious effort to obtain a law practice. Though his mind was bright and his remarks all showed his deep learning and reading, he loved solitude for reflection. In practice he enunciated the principles of law that should govern the case, and then deduced his argument therefrom. He used to say that a lawyer should not always look for fees—that frequently the principle of justice was at stake and that it was a privilege a lawyer had to be able to assist the poor in obtaining justice, and that justice was of more importance than

a money consideration. To those in necessity and to his friends he devoted his time without fee or reward. Mr. Stafford was particularly interested in the young and struggling of both sexes; and with words of encouragement he held out his hands to grasp theirs with love and affection. All classes came to him with their troubles. To young lawyers of ability, lacking clients, he was sympathetic. Genius of all kinds, including struggling artists and actors, appealed to him; and while advising, he aimed to see them fairly started. He inculcated in them the necessity of striving to be in the right, and not to swerve therefrom,—moulding their thoughts, their manners and their morals. One great feature of Mr. Stafford's character was the universality and humanity of his sympathy. What he did was done quietly, with no show or ostentation, and nothing for display or notoriety. To those with whom he was very intimate he did unbend, and when with him on a fishing excursion or rambling in the woods, his conversation was delightful and not easily forgotten.

For some six months previous to his death, although he did not make this known to his friends, he was aware that his race was run, and that the portals of eternity were about to be opened to his view, where he would meet that one whom he silently mourned and whose memory to him was ever fresh, and we doubt not he hoped that while in death he might be still warm in life, seeing and being seen, enjoying and enjoyed. Some three or four days before he was called away he mentioned to the writer that he had been unwell, and felt as if he had got a severe cold, affecting his breathing. Alas, it was just the beginning of the end.

By his death the Bar has suffered the loss of a member who was an ornament and one whom we were proud of, and one whom we delighted to honor and to respect.

HERBERT B. HUNTLEY

REMARKS BY MR. BRONSON.

It is no easy task to rightly estimate the value of any man. This is made doubly difficult when the end of that man whose character is being viewed, is clouded with a rash act, induced by an over-worked and shattered mind.

Herbert B. Huntley was born in Appleton, Wisconsin, January 10, 1862. He came to Seattle in January, 1891, and became chief clerk in the office of Burke, Shepard & Woods, which firm he served in this capacity for seven years, after which he entered upon a private practice, remaining active until his untimely end. He lived his life, made his impress and passed on, and it remains for us to make an appropriate record of him, and his life among us as a lawyer and a citizen.

I will be pardoned if I transgress the usual method of delivering a stereotyped eulogy, loaded with fulsome praise, which is so common that some of our ears have refused to accept this idle custom, but rather point out the man as he was, speaking of his weaknesses, as well as his strength. If I am to be true to my own better judgment, I must acknowledge that the only justifiable grounds for obituaries is to honestly and fairly estimate a man, so that we may have the double advantage of the record of his life, and that those who come after may avoid any of the weaknesses which may have been exhibited in his career.

Like all mankind, Mr. Huntley had both strength and weakness intermingled in his character. I should probably not say that his character had any weakness, but rather his life among us, for surely he was a man against whose character no one can lay a just blame. He was a useful citizen in the state of Washington, and particularly in the city of Seattle, the place he dearly loved. He stood for purity in civic affairs, and devoted himself untiringly to those means which in his judgment he believed was the wise course in establishing the highest and noblest condition in our city, state and national government.

He associated in all his walks of life only with those whom he considered pure in life, noble in purpose and true-hearted. He looked upon wrong as being of the same degree, it mattered not to him who committed it. He viewed right as worthy of the same praise however humble might be the bearer of the truth.

How can we properly weigh the other side of the man. There was not much to be criticised, but to those of us who knew him, he seemed to be dwelling more upon himself than otherwise. He was not selfish—no, not that, but he lost the great broad vision reaching out and over the plane of life in his anxious endeavor to see just where his feet were placed. He was prone not to look up, and out and beyond, but rather to look down, and inward and backward. Herein, as I view it, must lie the secret of what led him to commit the rash act which terminated his pure life. Then, too, he was

prone to be alone rather than to seek cheerful companionship, and read along particular lines, which were studies of either health or psychology. He emphasized in this particular with earnestness his weakness, the same as he emphasized in other particulars with earnestness the nobler side and the higher and better side of his life. He was therefore intense, and this led to his early end. I believe, however, that the highest tribute that can be paid to him is that at heart he ever intended, ever struggled, to be just with his fellow man; that if he wounded the feelings of another, the gash was deeper and more severe in himself than on the one upon whom it was inflicted, because he intended at all times to bring to those who were about him the sweetest happiness that fellowship with one another brings.

JOHN HAY

BE IT RESOLVED, By the State Bar Association of the State of Washington, That in the recent death of the Honorable John Hay, late Secretary of State, this country and the world at large suffered an incalculable loss.

He was a lawyer in the largest sense of that term, trained for a life-time for the great work he was to accomplish after his sixtieth year.

A graduate of Brown University, admitted to practise law in Springfield, Illinois; poet, journalist, essayist, master of modern languages, an accomplished citizen of the world, private secretary for President Lincoln, secretary of legation at Paris, Vienna and Madrid, charge d' affaires for a time at Vienna, assistant secretary of state, ambassador to the court of St. James, and secretary of state under two presidents—a matchless chain of experience and accomplishments.

He was the great treaty-making secretary of our history. He negotiated more than fifty treaties of great importance to this country and the world, and at least three of his achievements stand out as of world-wide historic value. The preservation of the Chinese Empire, the limitation of the hostile zone of the Japanese-Rus-

sian war, and the method by which he achieved these results, was a new and one of the greastest acts in diplomatic history.

The great occasion of the expanding powers of our country found this man of great constructive imagination, of special training, and of the unusual temperament required for the opportunities of the time. Again a great occasion in our history brought forth a great man.

APPENDIX

President's Address.

EDWARD WHITSON.

Gentlemen of the Association:

At our last meeting in Seattle President Peters, in his very excellent address, referred to the want of interest in the Association among members of the bar.

No doubt that has been the observation of every President since its organization, more particularly in recent years. None, however, have been heard to criticise, for the officers as a rule have not been more zealous than the members (with the single exception of the Secretary) and least of all would it become me, at the end of a term as fruitless and effortless as any that have gone before, to chide others for their lack of devotion.

This Association ought to be a mighty instrument for good; it might be able to largely shape legislation. It has accomplished at least one thing in that line, namely, the enactment of a law establishing juvenile courts, which was passed at the last session of the Legislature, largely through the discussion of the subject, and the advocacy of it at our several meetings.

It is true the oft-repeated endorsement of the Torrens system has been ignored, and an act allowing one corporation to own and vote stock in another corporation was recently passed, notwithstanding the overwhelming protest made a year ago.

Yet, withal, it may be that we have met with as much success as our inactivity deserves.

Perhaps it is not becoming in one who can lay no claim to having accomplished anything as your executive head, to extend advice to his successor, but it is hoped that recommendations for the strengthening of the organization may be received in the spirit in which they are offered, and with that hope the following suggestions are made:

1. The election of officers who have time and disposition to devote themselves to the needs of an organization of this character; a difficult thing, it may be admitted.

2. To arouse an interest among lawyers generally by inviting persons not members to read papers before the Association, thereby securing their co-operation and membership.

3. By making the Association so strong, and its influence so potent, that no lawyer of standing can afford to be outside of it. This, perhaps, is cutting rather than untying the knot, but the present membership, by proper activity, could greatly contribute to that end by showing sufficient interest themselves.

4. To devise some means whereby the judges of the state, both Supreme and Superior, could be induced to attend the annual meetings. It is gratifying to observe that some progress has been made in that direction.

5. By making the bar of the state at large feel more interest in the profession itself, namely, that part of it which relates to its history, and the importance of the office of attorney and counselor; to impress upon the people that the office is a dignified and responsible position; to make the lawyer fully appreciate the fact that it is a distinction among men to be a member of the profession; to encourage members of the bar to treat with dignified silence the gibes of the ignorant, but to teach those who are apparently wise how strangely they have confounded technicality with the very substance of our liberties.

It may be conceded that the members of the bar, as such, are not greater, wiser, more honest or disinterested than those of other professions, but the fact remains, whether it comes from the study of the science of government, or on account of the influence of the practice, which undoubtedly has a tendency to broaden men, that there is more patriotism and more steadfastness in the endorsement of principles which contribute to the common good, among lawyers, than among any other class of people.

The lawyers are the constitution makers, the framers of laws. They, not the soldiers, won the war of the Revolution. They created the sentiment for it, and gave impulse to the upheaval which set ablaze the fires of freedom, and they organized the propaganda which attended that and must attend every great movement of this character. The commercial classes do not so clearly see the national tendencies. They only rebel when ills become unbearable. The first to raise the cry of alarm against the encroachments of the powerful, and to suggest the infringement of constitutional rights, are the lawyers. The men who stand for the poor, without compensation if need be, who rebel at injustice, who uphold the courts, who have a contempt for vacillation, dishonesty and weakness in officers designated to administer the law, who stand for its supremacy, who, in fact, defend the constitution as they are sworn to do, are the members of our profession.

It would seem that with such traditions, notwithstanding the commercialism of the age, that they ought at least once a year pause long

enough to remember that the office of attorney and counselor is one of dignity and glorious memory, and that if the time ever comes when there are classes in this country, and class distinction, and class legislation, it is not to mob violence, nor to the scoffer, nor to the military power, nor to revolutions, but to the lawyers and the courts that the people are to look for the prevention of assassination and the spread of anarchy, the restoration of the equilibrium and the perpetuation of our institutions.

I have been led to these reflections by the indifference shown by the bar generally toward the only organization through which it can authoritatively speak.

The remark may be ventured that those who have attended from year to year, will testify with one common voice to having been benefited by some new thought suggested, and by the association with those attending from other localities.

While the profession of the law is becoming more and more identified with the business and commercial interests of the country, and the successful lawyer of the present day must have more business judgment than formerly (not for the conduct of his own business, of course) yet he ought not to permit that to detract from those other phases of his occupation profitably to be indulged upon occasions of this kind.

INTERNATIONAL ARBITRATION.

At the national capital may be found the headquarters of the American Conference on International Arbitration. Hon. John W. Foster, that noted diplomat and master of international law, is chairman of the committee, which is a sufficient guaranty of the importance of the subject, as well as the able promulgation of the purposes of the Conference.

On the 21st of November last this committee made an appeal by circular letter to the people of the United States through the Bar Associations and otherwise, in support of the treaties of arbitration then being negotiated by this government with France, Germany, Great Britain, Mexico, and other powers. The object of this letter was to induce the people to express their views to their Senators demanding the approval of these treaties. They are now matters of national publicity so that they need not be commented upon, but there is hope that International arbitration will eventually alleviate the evils of war, if it does not take its place altogether. That war will be entirely abolished can hardly be expected, but we indulge the hope that its perils, its devastation, its loss of life, and the desolation that it spreads over a conquered country will eventually be greatly minimized through the agency of arbitration.

This government has availed itself of the Hague tribunal to settle a controversy with Mexico, and the present policy of the administration is to encourage the peaceful settlement of national disputes and to promote peace among the nations, for which it ought to receive the fullest commendation.

UNIFORMITY OF STATE LAWS.

The agitation which began some time in the last century, perhaps before, it does not appear exactly when, has in recent years taken form by the organization of an association entitled "State Boards of Commissioners for Promoting Uniformity of Legislation in the United States."

Commissioners are appointed in every state and territory, two, I believe, in each, and these commissioners when assembled constitute the National Association. It would hardly be fair to say that no progress has been made in the object sought by the association, but it is certainly true that it is not of such a substantial nature as to justify the hopes of the advocates of this reform. It may be admitted that it would be an advantage if the laws of the several states and territories were uniform; particularly if they could remain so; but with forty-six states, and four territories, to say nothing of our possessions of Alaska, Porto Rico, the Hawaiian Islands and the Philippines, the impossibility of the task which these men have set for themselves ought to be apparent. Assuming, however, that they would be content with uniformity within the confines of the United States proper, we pause to inquire whether if the laws were uniform today they would be uniform tomorrow, and whether it is a possible thing to unite the states and territories in such a manner as to induce them to enact the same law upon any one subject; whether any lawyer within a year after the attainment of the desired end would dare to rely upon the uniformity of a statute without an examination of the question, and could he, if he did examine the statute, always be certain of the construction given it by the courts of the state where it is in force?

The main subjects upon which, it is said, that there ought to be uniformity are marriage and divorce, commercial law, wills, conveyances, corporations, weights and measures, insurance, and descent and distribution of property. To these, however, are added many more topics depending upon the personal views of the advocate.

One must feel after an examination of the papers which have been read from time to time and published by the association that there is a strong tendency among its members to contend that "My way is the best way."

Undoubtedly many unfortunate conditions have arisen from the

marriage status. Evils exist on account of the laxity of the laws relating to divorce, but on the whole it seems that a good deal of the agitation in relation to uniformity of the laws upon that subject strikes at matters which do not relate to uniformity at all, but grow out of the lax administration of the laws already in force.

Again, a great many people who are happily married themselves seem to look with great complacency upon the ills of those who are not. Whether the law authorize it or not, people who do not want to live together can not be compelled to do so, nor will they, and there is a difference of opinion among people whether they ought to.

In every age of the world the right to divorce for certain causes has been recognized. It is true our modern civilization has multiplied them, whether wisely or not is a matter for the casuists, but none of these matters relate to the question as to whether there could ever be an agreement as to causes for which divorces should be granted.

Those who contend for uniformity make a specialty of the statute relating to commercial paper. If the law merchant had not been tinkered with by the gradual encroachment, through legislation, upon its original simple and sensible rules, there would be no need for the agitation in so far as it relates to this subject. It has been construed by the Supreme Court of the United States over and again, and but for the innovations made by the statutes it would today be practically uniform all over the country, and would be well understood by the people generally.

So of descent and distribution of property. Quite a number of the states of the Union have adopted the community system.

It would be interesting to hear a discussion by the members of the association for uniformity, by way of harmonizing the community property law with tenancies by dower and courtesy.

These observations are made without any intent to anticipate, least of all to prejudice the report of the committee having the subject in charge, or to discourage anybody in attempting to harmonize the laws, or to commit the association to any policy in that regard, but it is respectfully suggested that there is but one way to successfully deal with the question, and that is as impossible as it is undesirable, namely, the nationalization of the country into one centralized government, and conferring upon the national Legislature the sole and exclusive power to make laws.

It occurs to me that the busy lawyer of the present day has enough to do without carrying on this hopeless work, particularly since its importance is greatly overestimated, and its practicability seems to be entirely out of the question.

STATE DECISIONS.

Since our last meeting the Supreme Court of the state in the case of Frederick Lough vs. John Davis & Co., 35 Wash. 449, has sustained a verdict against the agent of a building for failure to repair whereby a tenant was injured. This case was before the court at an earlier date on demurrer to the complaint, and in the opinion then rendered, to be found on page 204 of volume 30 of the State Reports, the authorities were reviewed at length, and that phase of the doctrine of respondeat superior which excuses the servant for non-feasance was carefully examined.

The conclusion was reached that an agent put in charge of a building by the owner, with full power to rent, repair and keep the same in safe condition for tenants, is liable to a third person for injury resulting from a failure to keep such premises in repair, and that there is no distinction to be drawn as affecting the agent's liability to such persons, between injuries flowing from non-feasance and mis-feasance. In that case the acts of the agent were clearly those of non-feasance.

One class of cases, it is said in the opinion, sustain the rule that the agent is not personally liable to the injured party, upon the principle that the liability must arise from some express or implied relation between the particular parties standing in privity of law or contract with each other. The Court concludes that contention in this language:

"There can be no distinction on principle between the acts of a servant who puts in motion an agency which in its unlawful operation injures his neighbor, and the acts of a servant who, when he sees such agency in motion, and when it is his duty to control it, negligently refuses to do his duty, and suffers it to operate to the damage of another."

The ground, however, upon which the court plants itself as being the real reason why the agent is liable, is the common law obligation devolving upon every person to use that which he controls in such a manner as not to injure another, whether he is in the operation of his own property as principal, or in the operation of the property of another as agent.

The decision in this case is important upon two grounds:

1. In committing the Supreme Court of the state to a doctrine concerning which there is much conflict in the authorities upon a very important branch of the law relating to negligence.
2. On account of its bearing upon removal of causes from the State to the Federal Courts.

Upon the first proposition it does not appear that the Supreme Court of the United States has ever decided the exact point.

In *Chesapeake & Ohio Railway Co. vs. Dixon*, 179 U. S. 137, it was designated as "a somewhat nice question," which the court was not called upon to decide in that case. The Circuit Courts, however, have often passed upon it, and text writers have announced their views. At least in the Federal Courts the weight of authority seems to be against the view announced in this case, and there is enough conflict in the decisions of the State Courts to render it uncertain as to what the rule really is.

As to the second proposition, its importance in so far as it relates to the removal of causes, depends upon whether the Federal Courts are bound by the rules of the State Courts upon a matter of that kind.

In the *Dixon* case the court quoted Mr. Justice Blatchford, apparently with approval, as having decided in *Connell vs. Utica Railroad Co.*, 13 Fed. 241, that:

"It is proper for the Federal Courts to follow the decision of the State Courts that a cause of action is entire."

That question, however, was not necessarily involved in the decision of the case, and the court reporter evidently did not consider it as having been decided, because it is not noted in the syllabus.

The applicability of the decision arises, if at all, in those cases where removal is sought on the ground of separable controversies, and it depends upon the question as to whether the Federal Courts are bound by the rule of the State Court declaring the liability of an agent or servant as affecting the joinder of defendants, but if it be assumed that the Federal Courts are so bound it does not always follow that because a servant is made a party defendant with the master, that the liability is necessarily joint.

The reasoning in *Lough vs. Davis & Co.* almost leads one to doubt the soundness of the rule which so generally prevails in the Federal Courts, and which is sustained by many of the decisions of the State Courts, namely, that the servant or agent is liable to the master for non-feasance, but is not liable to third persons for injuries resulting therefrom. But if the Federal Courts are bound by the decision of the State Courts upon this question, as being one defining the nature of an action, it is apparent that it may enter largely into consideration as to what are separable controversies, whenever that question is involved.

Another important case decided since our last meeting is that of the *State of Washington vs. Ide*, 35 Wash. 576.

This case involved the validity of a statute of the state relating to the collection of poll taxes. It is of more importance on account of the principles announced, than in its bearing upon the collection of the

tax itself, which was considered by the court, as it was in fact, a very minor matter.

The city of Port Townsend is one of the third class. Subdivisions 7 and 16 of section 938, Ballinger's Code, authorize such cities to impose and collect from every male inhabitant between the ages of twenty-one and fifty years an annual street poll tax not exceeding \$2.00, but excepts any member of a volunteer fire company.

The defendant Ide was convicted under an ordinance of the city, passed pursuant to the authority supposed to be conferred by the statute, and the case finally reached the Supreme Court.

The collection of the tax was resisted on the ground that it was repugnant to section 9, article 7, and section 12, article 11 of the state constitution authorizing the assessment and collection of taxes. Those sections read as follows:

Section 9, article 7:

"The legislature may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of property benefitted. For all corporate purposes all municipal corporations may be vested with authority to assess and collect taxes, and such taxes shall be uniform with respect to persons and property within the jurisdiction of the body levying the same."

Section 12, article 11:

"The legislature shall have no power to impose taxes upon counties, cities, towns, or other municipal corporations or upon the inhabitants or property thereof for county, city, town or other municipal purposes, but may by general laws vest in the corporate authorities thereof the power to assess and collect taxes for such purposes."

Under the first section the court held that the statute violated that clause requiring uniformity in taxation of persons and property. That the legislature had discriminated when it undertook to grant the right to impose taxes upon males between the ages of twenty-one and fifty years only, excluding females, persons under and over the ages fixed, and members of volunteer fire companies.

Those cases upholding the regulation of occupations by license were held not to be taxes upon property within the meaning of the constitution, or of the ordinary revenue laws. So the decision of the court upholding the inheritance tax was held not to be a tax upon property and therefore not in conflict with the constitutional provision requiring uniformity in the rate of assessment and taxation of property for the reason as the court said, "that the so-called inheritance tax is only a charge upon the passing of the estate by succession, and the privilege of the heirs or devisees to take it."

The doctrine of long acquiescence of the people, which appears to have actuated the Supreme Court of Minnesota in sustaining a like tax under the clause in the constitution of that state that "All taxes to be raised in this state shall be as nearly equal as may be," was distinctly, and I think properly, repudiated by the Supreme Court in its decision.

While the soundness of the conclusion reached in this case is not to be questioned, yet it is a notable decision for the reason that it appears to be an innovation on the rule in relation to poll tax, the right to collect which, it has generally been supposed, existed under constitutional provisions not dissimilar to those of this state.

So long as no attempt is made to raise revenue by any other than the direct method now provided by statute, no complications are likely to arise as the result of this decision, but it may be regarded as tantamount to holding that for the purpose of raising revenue by what is known as revenue statutes, as distinguished from those which undertake simply to regulate by means of licenses, there is but one method under the constitution of this state to be pursued, namely, the collection of revenue by direct taxation.

THE GROWTH OF SOCIALISM.

There is a growing sentiment in favor of municipal ownership and control of all public utilities, including government ownership of railroads. That this sentiment is socialistic in its tendency, if not socialism in a modified form, is quite clear. That the agitation will continue until all public utilities in use in the cities shall have passed under the control of the municipalities to be operated as public concerns can hardly be doubted. It is argued by those who advocate it most strongly, that the experimental stage in municipal ownership has passed; that it has been demonstrated that the public is as well and more cheaply served under government control, and that the profit which would otherwise go into the treasury of private corporations, is applied to the benefit of all taxpayers of the municipality, either by making taxation lighter, or by making the rates lower.

It is said that Glasgow is the most notable illustration of the successful operation of this system, yet we are not wanting in examples in our own country and in our own state. Private corporations, however, appear to thrive and prosper in competition with the municipal plants, and it may be considered an open question yet whether municipal ownership has progressed to that stage, in this state at least, where it is a distinct benefit to the people at large. Whether it has or not, or whether it has elsewhere, the tendency is so manifest and pronounced that it would take one of much hardihood to argue that we are not to

have it to its fullest extent. In Europe the principle is not new, and the government ownership of railroads, postal telegraph, and parcels post features of the mail service, water and lighting plants, is as firmly established as the carrying and distribution of ordinary mail matter is in this. When it was first proposed to establish a postal department in this country it was argued that the government had no more right to enter into the carrying of mail, than to enter into any other business, that it was purely a matter of private concern, and the same argument, of course, has been made against all municipal ownership. The postal department with its complicated and complex system, working harmoniously in its details, is pointed to as one of the triumphs of the socialistic theory. What will ultimately result no one can say. Whether the human race will ever reach that state of unselfishness which will justify the merging of the common interests into one community of effort, cannot now be definitely foretold; but in so far as history discloses, and our knowledge of human frailties and weaknesses shows, we appear to be some distance from what is supposed to be that delightful state where individual effort counts for nothing but the common good; where competition becomes of no value, and where a worker with hands or brain cannot say that he is entitled to the full benefits of his own creation.

It has been intimated in recent years that the system prevailing in New Zealand is not as successful as has been claimed for it. The nearest approach to the theory of the socialist, it has been said, has been made in that country. We of this age may hope for a continuance of the individualism which has placed our country at the head, commercially at least, of all the nations of the world.

It may not be unprofitable to speculate briefly on what would result in the way of administration of the laws and the processes by which society would at last resolve itself into a great family, and how the law would be administered under this supposedly blissful condition. The more radical, of course, would seize upon the accumulations of the rich without compensation, on the theory that it would simply be a retaking of what they have inequitably appropriated to their own use. Others would be willing that they should have compensation. That, of course, necessarily results in a contradiction, because if the result of all the efforts of the people belongs to all the people, and all the natural resources are equally available and open to them regardless of priority, diligence or foresight, then this compensation awarded to the owners of property would have to go into the common fund, and the result would be the same as though the property of private owners had been confiscated on the start. There could be no actions in courts for the enforcement of contract relations, because there would be no

individual answerable, a favorite argument for the system; ultimately the state would answer for the default of all its citizens. Under such a state of society, it would be necessary to restrain the violent and punish the vicious, in which case it may be assumed that attorneys for the defense of such would be assigned by the court exclusively, because no client would have the wherewith to pay; and even this is upon the violent assumption that they would be tolerated as a necessary evil.

All this with the knowledge that many shades of socialism have been promulgated. This theory has been the hobby of the impractical, who have conceived its ideal state, and have undertaken to meet the difficulties attendant upon the suppression of individualism by various plausible arguments, but the average citizen of this age, it may be believed and hoped, will strenuously insist that the improvident, thoughtless and indolent be prevented from sharing equally the earnings of the diligent, energetic and enterprising, being content to aid the unfortunate from the abundant accumulations of thrift.

This question is not touched in any spirit of alarm, but as a reminder of the gradual change in the sentiments of the civilized peoples of the world.

Within a hundred years there has been a very rapid, but unconscious growth, toward socialistic doctrines. We are soon apparently to have the ownership of railroads as a political issue. As to the propriety of public ownership of all the public utilities, there will be, of course, radical differences of opinion. Apparently we have acquiesced in the ownership of some of them as being within the proper exercise of governmental power, but as to the others, it is still an open question. Those accomplished, what next?

In the light of these established things and things sought to be established, the decision of the Supreme Court of the United States in *Lochner vs. the People of the State of New York*, is one of much interest.

A statute of that state prohibited a baker from working more than sixty hours in any week, or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week.

The statute was attacked upon the ground that it was violative of the 14th Amendment of the Federal Constitution, and therefore not sustainable as an exercise of the police power of the state.

The New York Court of Appeals sustained the constitutionality of the act, but upon review by the Supreme Court the decision was reversed.

The Supreme Court based its decision upon the ground that the

statute interferes with the right of contract between employer and employee, and that this right is a part of the liberty of the individual protected by the 14th Amendment.

How far the states may go in the exercise of the police power is universally admitted to be one of much perplexity, which has often been before the Supreme Court for decision in one form or another.

In the case of *Allgeyer vs. Louisiana* (165 U. S. 578) it was held that when or how far the police power of a state may be legitimately exercised must be left for determination in each case as it arises; and the court acting upon that principle in effect held that the powers of the states, "somewhat vaguely termed police powers," to use its own language, do not extend to declaring those things unsafe or unhealthy or immoral which are not so in fact. The announcement is important in the case under consideration, in view of the conclusion that the state had gone beyond the limit of its police powers in enacting the statute.

The court reviews many decisions theretofore announced by it, but finds that none of them have gone to the length of sustaining such a statute either in fact or by analogy of reasoning.

In the case of *Holden vs. Hardy*, (169 U. S. 366) a statute of Utah was sustained limiting the employment of workmen in all underground mines or workings to eight hours per day except in cases of emergency where life or property was in imminent danger.

The applicability of this case to the one at bar was denied on the ground that mining is an unhealthful occupation, and therefore the act was a valid exercise of the police power of the state, and it is worthy of note that in rendering the opinion in that case the court expressly declared that it was "not necessary to discuss or decide whether the legislature can fix the hours of labor in other employments." And the court placed some stress also upon the exception in the statute of Utah relating to emergencies, and noted the absence of such exception in the statute of New York.

So it was said that the case of *Atkin vs. Kansas*, (191 U. S. 207) which upheld the power of the state of Kansas to limit the work of laborers employed by the state on its public works, or any of its municipalities to eight hours, had no application, for that case related to work of a public character to be done for the municipality.

The case of *Knoxville Iron Co. vs. Harrison* (183 U. S. 13) was one sustaining a statute of Tennessee which required redemption in cash of store orders or other evidences of indebtedness, issued by employers in payment of wages due to employees.

This case seems to be the nearest approach to a decision of the

question before the court of any that it considered, but in denying its applicability it was said:

"The employees in that case were held to be at a disadvantage with the employer in the matter of wages, they being miners and coal workers and the act simply provided for the cashing of coal orders when presented by the miner to the employer."

The case of *Jacobson vs. Massachusetts* (197 U. S. 11) upholding a statute of that state providing for compulsory vaccination was held not to apply. In deciding that question the court propounded this inquiry:

"Is this a fair, reasonable and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty, or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family?"

And the question was answered that the statute was within the police power, nor did the court in nolding the statute at bar unconstitutional consider it a question of substituting its judgment for that of the legislature. It was said:

"We think that the limit of the police power has been reached and passed in this case. There is in our judgment no reasonable foundation for holding this to be necessary or appropriate as a health law to safeguard the public health, or the health of the individuals who are following the trade of a baker. If this statute be valid, and if, therefore, a proper case is made out in which to deny the right of an individual sui juris as employer or employe to make contracts for the labor of the latter under the protection of the provisions of the Federal Constitution, there would seem to be no length to which legislation of this nature might not go."

In commenting upon the present tendency toward legislation of this character the court remarked:

"This interference on the part of the legislatures of the several states with the ordinary trades and occupations of the people seems to be on the increase."

Reference was made to a decision of the Supreme Court of New York in (*People vs. Beatty*, 89 N. Y. Supplement, 193) holding a statute regulating the trade of horeshoeing unconstitutional, and to a like decision of the Supreme Court of Washington in *rea Aubrey* (78 Pac. 900) and one of the Supreme Court of Illinois, (*Besette vs. People*, 193 Ill. 334), all calling a halt upon legislation regulating the private affairs of the people and all deciding the same question. It was urged as a reason for sustaining the law that cleanliness would

be promoted, and the health of those engaged in that calling would be better preserved, but the court concluded that this argument would apply to the bank clerk, the lawyer's clerk, the real estate clerk, the broker's clerk, or to the printer, tin-smith, and, in fact, to any other calling. It was pertinently remarked:

"We do not admit the reasoning to be sufficient to justify the claimed right of such interference. The state in that case would assume the position of a supervisor or a *pater familias* over every act of the individual, and its right of governmental interference with his hours of labor, his hours of exercise, the character thereof, and the extent to which it shall be carried, be recognized and upheld."

Clearly the writer of the opinion did not consider those cases upholding the right to regulate and control corporations, such as common carriers and the like, as having any bearing upon the question under discussion, and indeed the distinction is so manifest, and the right to their regulation and control is too well established to be considered here. Nor does the right of the people to own and operate these public agencies present any question of law for consideration, for the people have an equal right to exercise them and to delegate them to municipal agencies. These are upheld entirely upon a different principle, as the court so happily distinguished.

Mr. Justice Holmes in his dissenting opinion contended that the statute belongs to the same class as Sunday and usury laws and those prohibiting lotteries, and he remarked that:

"The 14th Amendment does not enact Mr. Herbert Spencer's social statics."

He argued that the Massachusetts Vaccination Law, the principle involved in *Northern Securities Co. vs. United States*, (193 U. S. 197), the decision upholding the promotion of sales of stock on margins or for future delivery (*Otis vs. Parker*, 187 U. S. 606), together with the cases already referred to as having been reviewed by the majority opinion, were in principle analogous with the case before the court.

Mr. Justice Harlan, in his dissenting opinion, also contended for the application of those cases, and cited many other decisions of the court to sustain his contention as to the validity of the act. He reviewed at length also the question as to the occupation of the baker being unhealthful, contended that it is, and that the act should be upheld upon that ground.

It is interesting to note that the majority opinion sustaining the law in the New York Court of Appeals was delivered by Judge Parker; that the court stood four to three, and that in the final decision of the Supreme Court the law was declared invalid by a bare majority, four of the justices having dissented.

If the legislature of a state can arbitrarily designate an occupation as unhealthful, a thing immoral or injurious to the public health, when it is in fact well known that it is neither one nor the other, or can say on account of his physical and moral well-being that it is not well for one to work more than eight or ten hours a day, as the case may be, for the support of himself and family, even though they may be in the greatest extremity, then the time has arrived for a careful examination of the police powers, and a restriction upon their exercise.

To say that one may not labor more than ten hours must inevitably lead in the end to fixing what the employer shall pay, with the result that the right to contract would be destroyed altogether, and the state could in effect assume the administration of the affairs of the community; divest owners of property rights; eliminate the right to one's own earnings, all contrary to the letter of the constitution and the spirit and genius of our laws.

To admit this is to abrogate all constitutional restraints, abridge the freedom of the individual, and substitute therefor paternal control of the community and its citizens.

It is gratifying to observe that the Court, true to its traditions, even though divided, has interposed its judgment against this untoward drifting to over-regulation of the affairs of the individual.

No lawyer can turn from a study of the decisions of the Supreme Court of the United States without being profoundly impressed with the patient industry, the capacity for infinite detail, the never lagging care, the absolute fearlessness, sincerity and ability of the judges of the greatest judicial tribunal in the world.

The Jury System

S. M. BRUCE.

MR. PRESIDENT—The boast of lawyers has been, that law was so certain it never changed; and so flexible it constantly adapted itself to new conditions. Truth is, it never lets go of an old precedent until a new one has become well worn, and it links the traditions of the past with the predictions of eternity. Possibly this is why the subject of the "Jury System" comes up in some form or other, wherever the disciples of Blackstone are gathered together. The Jury System is always a new theme because of the odd tricks it plays upon the practitioner—the one agency God Almighty don't know what it will do next.

Perhaps its uncertainty has been the charm working for its continuance; there is enough of the gamble; the die of chance in the outcome, to fascinate the student, and entice the practitioner into becoming its advocates.

This opening of the subject once more will be without any attempt to laud or censure. Virtues of the Jury System have been told these centuries past, in a warmer, more enthusiastic strain than current eloquence can attain. Its present influence and functions, and its future growth and adaptations, have been set forth with alternate praises and abuse by many masters.

The fact, however, that each year at meetings similar to this gathering it comes forward as a special topic, shows both the deep hold it has on the opinions of men and the growing dissatisfaction which is arrayed against it.

After an investigation of some thoroughness it is believed discussions have not produced more active results because they have too often been a review of its political order and results, without scrutinizing the scientific sources of its origin and evolutionary development. It is not assumed that a new idea or a new argument for or against it is to be presented; nor is it meant to say the subject has not been brought to attention from the same view point. The paucity of learning along these lines is remarkable, and becomes perplexing when contrasted with other social growths. Within such limitations, the task undertaken is to elucidate a subject which in other jurisdictions means

an investigation on behalf of the state of legally disputed rights; with us means the investigation of disputed facts by twelve men under the direction of a court or state. Without regard to artistic order, an attempt has been made to set forth the origin of our Jury System: its growth and functions and its elimination.

Thus introducing a discussion of the origin of the Jury System involves the modification of some old definitions, analyzed in the light of modern teachings applied to the practical things of today. The student at the threshold of his career is told, "That law is a rule of action, *prescribed* by a superior power, for the regulation of the conduct of an inferior"; told with intense emphasis on "*prescribed*." This definition was very naturally suggested to minds deeply imbued with Semetic religious ideas and trained to believe in kingly right and divine emanation of laws.

The belief that God Almighty originated government, ordained rulers and prescribed principles of policy, naturally inspired these definitions. So long as this origin was accepted as standard, and believed in obediently, these definitions were satisfactory. The human mind has always associated power and force as the best corrective agencies for weakness and inferiority. The mind of man—collective man—in a rudimentary civilization, has always associated God with the attributes of strength and vengeance.

The priestly influence (and all people have been influenced and controlled at some stage of their progress by priests), has always claimed that God *prescribes* and priests interpret laws. In those civilizations through which our institutions come, the priesthood prescribed through a king asserted to be divinely ordained, and later through a judge sitting in the king's name and stead, such judge being drawn from the priesthood, to define the will and execute the decrees of God and king.

These associated ideas account for the belief of the old lawyers and law writers that laws were prescribed remotely from the inspirations of God, or directly from the king as God's chosen vicar. In passing from the monarchies to democracies, by the slow process of social growth, the fiction passed as an attribute of sovereignty to the people, who invariably love to speak of their laws as emanations from Deity.

We have pretty generally repudiated the idea that Omnipotence had anything to do with the great bulk of historical legislation; but we are so welded to tradition and loaded down with precedent, we are not yet able to exonerate Him without getting out of harmony with "the authorities."

As justification for wandering from the prevailing definitions of

law, let us acknowledge as the origin of mankind what science evolves, and consider law as part of a general result, originating in the necessities, and springing out of the first growths of the rudest society, extending with the increasing needs of more complicated conditions, adapting itself to the wants and requirements of civilization, the extension of commerce, and social distinctions, with an increasing tendency for the better. Analyzed from this point of view we define law as being "The conservative forces of all intelligence, working for the betterment of civilization."

Of all the agencies making for the amelioration of human conditions, law—be it said in humiliation—has been, and is the least progressive. It is the last to abandon old tenets, and ever alert to resist innovations. Since we have learned the most complex religions trace their source through some form of ancestor worship, and that both the administration of law and its interpretation were derived from the priests, it is easy to understand that law is now, and has always been, more than anything else, the influence of the dead over the living. Alive to its love of legarthy the disposition of lawyers and judges has been to apply the law—or formulate rules of conduct for future use—with reverential obedience to the probable wishes, or speculative action of the distinguished dead. This practice has been applied equally to subjects of legislative enactment, as to questions of decision.

In combining the ideas of force and power as attributes of God, with the teaching that correction was reached through violence, the interpretation of customs, or laws administered with the primary object of fulfilling the wishes of dead ancestors, would necessarily ensue. The coupling of current events and future endeavors to the past, has given rise to a system of precedents difficult to abandon. At a stage when such ideas were controlling their social life, two conflicting civilizations met. One, coming from the South of Europe, partly pagan and partly Christian, voluptuous in desire, ardent in passion, extremely crafty and indifferent to family ties, subservient to authority and ceremony. The other from the North, accustomed to the greatest individual liberty and closest family relations, scornful of ceremony and restraint, disdaining luxury and pleasure, devoted to frankness and open discussion, and acknowledging no one individual as superior to another. These two forces united to gratify one sentiment they held in common—the lust of empire. Along the boundaries of these racial possessions, at a time when the distinguishing characteristics of each were most active for the correction of the faults discerned in the other, arose the necessity of settling individual claims for redress. The man of the North arrayed against the man of the South and *vice versa*.

The one never willing to trust his interest wholly to the disposition of the other, resulted in compromises on methods of procedure, whenever the adjustment became the subject of governmental regulation. *Jures*, or the public investigation of private disputes, resulting in the public support for one side of the controversy, constituted a trial, trial of a law suit. The gradual advancement of Christianity, and with it the ceremonial recognition of a single source of power put forward as the *jures of the South*, established the judge, first in the person of king, then priest—then the man “learned in the law,” to examine complaints and prescribe remedies. The Saxon brought forward the discussion of the open council or representatives of the community as their method of investigation, and no appeal of king, or priest, or creed, could induce the man of the North—the Saxon, the Celt, or Briton, to relinquish his right to be present and speak in the assembly of his peers. When his clan had proposed an expedition, or voted a restraint, it was after a discussion in council; in gemote or village assembly, where his voice counted as one. It was not to be tolerated that his individual interests should be disposed of by any procedure in which he did not participate. He had the right to speak, superior to any agent or attorney, and the right openly to lay his claims before his clansmen, who knew and understood him and his intentions and would advise him and support his cause. If they exonerated him, he defied the judge. If the judge refused acquiescence, there was war. If he was adjudged in fault by his clansmen, the judge might inflict the penalty according to the customs of the Northman’s clan. The country stood to arms to see to it that retribution was according to their customs, and not the customs of the South. The policy of the Southern race to recognize local customs, and assimilate and harmonize them to gradual displacement by their own, was characterized in their legal procedure as in matters of statecraft. By this system of compromise two—the greatest two saving factors in our Jury System, found origin; namely, the necessity of getting at the intention; and that mercy aroused by a mutual sympathy, existing in the minds of the triers and the tried. Through all the varied mutations of time and change that have since followed, these two virtues of the jury system radiate its highest lustre, and command the most reverential respect. If no other reasons had ever been set forth for exalting the Jury System, as a factor in the upbuilding of human happiness, these would afford ample justification. In a series of developments—political, ethical and economical, during the long centuries between the meeting of the Northmen with the Southmen and the advent of popular education, the man of learning, by reason of the environments of fate, was illy qualified to understand

the intentions of the masses, or to extend that sympathy or confidence necessary to do exact and equal justice. The superior ability of a jury to get at the intention and level facts, and to equalize degrees of conduct, has enriched language with such expressions as "ordinary care," "ordinary intelligence," "reasonable compensation" and "reasonable doubt," with their almost limitless adaptations.

From the introduction of authentic history, we may trace with interest the growth of the jury from its starting out; the shield and protection of the common man against the aggressiveness of class; the open forum for investigating conflicts between the crown revered by the man from the South, and the customs dear to the men from the North; through the various phrases of disposing of the case because of its *personal* knowledge of the facts; then as *witnesses* to the facts, as well as investigators for truth; then as the instrument for learning, applying and advising as to facts, and finally emerging as impartial judges of facts, the whole knowledge of which was derived as hearsay, coming through the instrumentality of evidence. The role of the jury today is to learn for the first time after going into the jury box what the facts with respect to disputed issues may be, and finding the truth as it is convinced, award recovery according to the witnesses believed. In some few states the jury is still judge both of the law and the facts, and may act arbitrarily if so willed. There an acquittal would leave the people without remedy either of new trial or appeal, and examples are not wanting of such results having come to pass. To the student of sociology, long details of history, minutely tracing each step in the differentiation of trial practice might be of interest; but for the occasion before us today, allusions must suffice. However entertaining it might be to elucidate past events, or collate the historical proof establishing existing conditions, it is our duty to deal with things that are, and philosophize upon what is best for those who will follow us. Regardless of the glories of conquest, whether on field or at the forum, we are most concerned with the events of today. It is time for us to act upon the knowledge that the highest duty we owe the past is to deliver the *best* of our own time to the future.

The jury, as composed of twelve men, is as old as Edward III. In its earlier stages, and until a later time there might be more than twelve men on a trial jury; but whenever twelve agreed upon all the points, there was a verdict. From the disposition to mingle religious ceremonials with legal procedure, the idea of twelve jurors doubtless originated from the number 12 running through the religious teachings of the Semetic races as the twelve guides sent into Caanan to seek and report the truth; the twelve prophets, to foretell the truth; the

twelve apostles, to preach the truth; the twelve stones the heavenly Jerusalem was built on. Twelve being a sacred number was for the same purposes carried into the Jury System, and whenever that number of jurors concurred, the truth was at hand. This resulted, like other legal fictions, though there may have been an indefinite number deliberating over the case, and a majority of the jurors may not have agreed. The old practice was to add a given number of jurors at certain intervals of time, until some twelve of the total empaneled agreed. The practice prevailed as to grand juries and petit juries alike.

Until a much later time than Edward III the jury might bring in a verdict regardless of whether there was evidence in support of it. The jury was at liberty to dispute by their verdict what the evidence revealed. In the verdict the "very truth" was spoken, and testimony could not be pointed to for the purpose of overthrowing it. Lord Ellensborough was the first judge to rule that a verdict contrary to the evidence was wrong. About this time the judges began to encroach upon what had previously been considered the domain of the jury, and gradually assumed the power to set aside verdicts in civil cases, though to this day in England, and the major number of her dependencies, the judges have refused to vacate verdicts in criminal cases, though should they do so the power would not be doubted except from want of precedent. Throughout the United States the power to vacate verdicts is fully recognized, though for the most part the practice will be found to have statutory authority. Legislation, however, authorizing the practice followed subsequent to the exercise of the power. The judges were simply sustained by Parliament.

Throughout the history of the common law, the idea never faded from the popular mind that the judge represented the king, who could do no wrong, and was vested with absolute power unless restrained by act of Parliament to which the royal assent had been given. Statutes, and more especially those permitting or regulating the granting of new trials, are in their origin purely complimentary to the mercy and learning of the judge. The judge speaking for the king, had every authority unless curtailed by act of Parliament or precedent. The exercise of the power was the origin of what we call "judicial discretion." The practice of setting aside verdicts began to prevail simultaneously with the exercise of the more extended chancery powers. The idea underlying equity was, no doubt, the manifestation of the royal mercy or conscience, which was not bound by the rigid rules of the common law. The invasion by chancery, especially when it asserted the power to grant new trials in law cases, and set aside judgments based on

verdicts of juries was stoutly resisted by the old common law lawyers, who were so far successful in their oppositions as to bring about another compromise, whereby a dual system for the enforcement of rights, asserted under one set of laws, was devised. So strenuous was this advocated that it continues in the State of Washington, with all its foolishness, to this day. The system of equity was more comprehensive than the jury system would permit, and throughout the greater part of Europe was quickly adopted as the superior and more certain method of getting at truth and protecting rights.

In England and her colonies the disposition to cling to precedent at the sacrifice of individual rights prevailed against equity until equity formulated rules and agreed to be bound by precedent, almost as arbitrarily as the common law was bound. This compromise—in its ethics akin to the origin of the Jury System—as a policy, has hampered the development of both law and equity without other benefit than involving lawyers in doubt and litigants in expense. The establishment of chancery practice, hampered and limited though it be, marked the flood tide of the Jury System in all the broader relations of mankind, and may be cited as the turning point in its history. From that epoch advocates of such procedure have neglected no opportunity to bolster the Jury System by legislation, by encomium, and by preachings. Despite all advocacy the student of events cannot overlook the constant lessening of faith in, and influence of the jury in business adjustments. Equity has taken the business and the confidence of mankind unto itself, leaving the Jury System the cold comfort of giving advice on crimes and civil subjects based essentially on the law of retaliation.

When we consider present conditions, and analyze the essentials of a closely tried law suit, we find the jury little more than advisory to the judges—a medium by which the judge is relieved of the disagreeableness of saying to one set of men, "I do not believe what you say about this matter; I believe your adversary." This, in plain English, is where we stand today. The judge determines what persons are competent to testify, admits or excludes testimony as it is offered, cautions the jury to what purpose evidence shall be considered, what witnesses must be corroborated, what of each may be disregarded as stricken or not corroborated, what would justify the findings of notice or want of ordinary care, and so on; sends the twelve to consider which side of a conflicting tale is to be believed, and when ascertained becomes the recipient of judicial favor. The jury is alert to discover the judge's opinion, with which jurors are ever anxious to agree, because throughout all this formality he distinctly insinuates between pauses that if what may be done by the jury fails to meet his approval, the verdict will be set

aside and a new trial granted. Now to a people not "to the manner born," that has all the characteristics of a huge practical joke. If the Anglo-Saxon did not take himself more seriously than other nationalities do, he would *know* it was a joke—the most extravagant joke in the category of public affairs.

Take the influence of the dry, dead past, of precedent and ancestor worship out of the institution, and practical America would not furnish the Jury System a night's lodging. The system is today, as much as when a king's wish made public opinion subservient to the going popular conception of the things involved, likely, according to passion or prejudice, to return a verdict to the most flagrant abuse of truth. With a popular cry against any litigated subject for the time being, the prejudice of gossip and sentiment will carry the verdict against as honest a tale as ever fell from witness' mouth.

The ordinary action for negligence is an every-day example. The average jury will infer negligence against a corporation nine times out of ten if permitted to determine whether the injured party used ordinary care. It is dangerous to submit the most perfect construction, management, equipment and foresight as a defense. It cannot be relied upon if contributory negligence is not glaring. The exercise of eminent domain is another illustration. Land is made valuable solely by verdict. It may be barren rock, unfit for grading purposes; or forest swamp, inaccessible save to creatures that fly, but the jury sells it to a railroad for right of way at a price that makes the farmer of arable soil green with envy; and because "the jury are judges of the credibility of witnesses" judgment is awarded, absolutely contrary to truth and fair dealing.

In a casual observation running over the average experience of practicing lawyers, how often have we seen the psychological condition of a community crop out in verdicts. There are times when an arraignment is equal to a conviction; that is, if the case goes to the jury, the accused goes to conviction no matter how strong the defense. Perhaps within six months the sentiment will swing the other way, and conviction by the same jury upon the same facts be next to impossible. These conflicting conditions manifest themselves most frequently in prosecutions for selling liquor on Sunday and allied offences, when a locality is alternately arrayed against itself. The illustration is introduced to show that public opinion controls the Jury System. And as public opinion is crystalized in the jurymen, before he goes into the jury box, it is not dormant when the ballot is taken; on the contrary, it is very much alive, and ninety-nine cases out of the hundred get the benefit of the doubt. The opinion thus active, is ordinarily the

momentary impulse of the advocates of an idea, rather than the sober judgment of exhaustive research. In the formative stage of civic ideas the average man rushes to conclusions which sober reflection subsequently repudiates; and on the ever shifting theme of personal rights and privileges, the average mind clings to clamor as the best argument, and begins investigation with that mental condition well installed.

In tracing the origin of the Jury System, under our first subdivision, it was attributed to growth of customs in the advance of civilization, and, in our race, springing into historical adaptation as social compromises between people differing in degree of advancement, consequent upon unequal environment. Not doubting the truth of that theory, the claim of many writers that it has been exclusively the characteristic of our own racial ancestors, is not well grounded. The Jury System, in its original formation, carried far down the history of all people, who have left us history, seems to have been universal; all historical nations had it in some form at some time, but the Northern races have developed it farther, and the English refined it and retained it longer, and narrowed its functions within closer confines than any other race. In France and Italy it has long been entirely eliminated; and in most countries of the East it early fell into disuse. The advancement of equity over constantly enlarging jurisdictions demonstrated greater advantages both as to time and outlay over the Jury System, while the complex growth of modern society is constantly conflicting with its utility as a method of discriminating facts. As a means of *disclosing* facts, it has long been obsolete with the Norman and Saxon nations who yet retain it as a factor in the administration of law.

When the jury became to all practical purposes a mere advisor of facts, it passed the apex of its utility, and entered upon its decline. The advancement of civilization constantly circumscribes its sphere, and more and more impugns the wisdom of its deliberations. Acts of Parliament and diversified legislation have striven to retain and purify its usefulness, but have failed to stay the influences making against it.

The encroachments of equity, the reduction in numbers of jurors, authorizing verdicts upon a vote of the majority; the imposition of burdensome jury fees as a condition to submitting the issue to that form of trial, the limiting of argument of counsel, the frequent granting of new trials, and more frequent reversals for misconduct or prejudice of the jury, are factors tending toward its ultimate extinction.

It may be kept and fostered, by eonium and statute, for an indefinite period; how long we do not know and need not prophesy. When,

however, the standard of popular education has risen to what it is in the American people, it is time to consider the successor of the Jury System.

The thing that distinguishes a trial at law in the courts of Anglo-Saxon races over such combats in other nations, is the open conflict and public proceedings. Every law suit is a battle, and there are no secret sittings of courts. It is in the *openness* of these contests, and not in the division of responsibilities between judge and jury, that protection to our institutions is found. So long as we preserve the rule requiring publicity in trials, there is not the slightest danger of our judges becoming remiss or tyrannical, any more than any other branch of our government becoming oppressive. The idea of the government becoming tyrannical is a mere scream in the prairie, because the power of the common people—which is all the people—has become preeminently *the* government. The old claim which has been, and is still, the greatest argument for the continuance of the Jury System that it gives, strengthens, or sustains a greater guaranty to individual security and happiness, has largely fallen away. The advocates most enthusiastic for its continuance invariably say, "When I have a weak case, give me a jury every time." Short on facts they play long on sympathy, prejudice, passion, opinion, often ingrown instinctive opinion, unconsciously controlling the untrained individual juror who has been previously studied and balanced by the discernment of the advocate, and made to produce a result at variance with his right intentions. The argument proves too much; and the reason is without reason to the conscientious mind, prompted in the search for truth, to bringing about the advancement of greater benefits.

The Jury System, like all agencies working in the evolution of forces, began losing public confidence when it was found necessary to place it under the guardianship of statutory penalties and criminal prosecutions. When jury solicitation became the subject of legislative concern, and "jury fixing" punishable as a crime, the better wisdom would have been excision, rather than attempted protection.

One of the most convincing proofs of degeneracy in social forces is present when penal legislation has become necessary to their preservation. All statutory law is remedial; it deals with existing things, and never creates new conditions. The evil exists first, the remedy is a sequence; and the very fact of a prescribed punishment shows frailties, and weakness no longer to be tolerated. The human mind is only capable of creating laws for corrective purposes. It has not yet attained the dignity of foreknowing what will arise, or of regulating conduct that has not already been within its experience.

The charges of jury corruption seldom hit the mark, and are very rarely deserved, and have often been made against men, than whom none are more honorable or conscientious. Still these men were far from blameless in a human sense, and were equally open to censure, so far as justice was concerned, as if they had acted corruptly. They were open to the censure of lack of discernment.

Their difficulty lay in the correlation of facts. The jury is not always understood by the public, because the jury does not always understand the truth as it is unfolded before them. It is often impossible for the lay mind—the average lay mind—to collate complicated facts, or to arrange them logically, from the elucidation of others. The average panel is dominated by one or two positive personalities, who in turn are dominated by what they conceive to be the general idea of the community—certainly so if the thought prevails that they have fathomed the personal opinion of the judge, as harmonizing with their individual logic. These men—a few of the twelve—dictate the verdict. For all practical purposes the verdict is made up by the minority.

The ability to adapt business affairs to improved methods, distinguishes a progressive from a non-progressive people. In the utilization of natural and applied science, the luxury of wealth and commercial activity have countermarched the aspirations for fame. Mankind no longer looks to the sword, the forum, or the pulpit as the surest ways to public or private success. The career of today and the career of the future, so far as we can prophesy, offering encouragement for social or political preferment, is business. There is little prospect—scarcely a possibility—for any Anglo-Saxon citizen, especially in the United States, to write his name on the scroll of military or naval distinction. The age of great military heroes has passed into the eternal heroic. The captains worth while are the captains of industry. The lawyers enjoying the most lucrative practice are the ones who keep their clients out of litigation, and understand the economies of business. The preachers able to hold their congregations are teaching how to fare best in this life, leaving the life to come to work its own way. Much of what we have heretofore held to be crime we are learning to regard as *manifestations* of disease, to be dealt with by the alienist, rather than the jailor; and vice is to be eliminated by mankind aiding nature to shuffle her useless cards. In surgery the practitioner is constantly excising non-essentials to the improved condition of the essentials. He never questions whether there is a long and respectable line of precedents controlling the needed operation. He examines precedents as sources of information, not as limitations on

his work. His work is directly their opposite. He asks only what is the needs of the healthy tissues of this individual, what is the saving effect and future benefits dependent on his action. If what he leaves will grow and live, that which hinders such growth must be cut off by the best methods known—the quickest methods known. If possibilities are favorable, there is an end of hesitancy. That which is best to be done under the circumstances based on probabilities for the future, discrediting the limitations prescribed by the past, is done. That differentiates a living profession from a lingering one. The law, gentlemen, is a lingering profession. It is not always jealous of right, and would rather work individual injury, than foresake a form approved by long buried originators. "Delayed by law until useless from old age," is not always a jest. It is too often a fact. We should revise our notions of precedent. *Stare decises* should never be invoked unless both the principle and the facts in issue blend into that which is essentially right. We should emulate the example of France, where decisions based on precedent are not permitted, and are never used except for their logic. It is time we should, and better results will ensue if we will, diminish our reverence for past technicalities—our adherence to forms. We should call to the analysis of disputed facts men whose minds are trained in the sifting of testimony, capable of getting at the truth from intellectual rather than emotional processes, and award judgment for righteousness and not by rule.

The Jury System is a most non-progressive, delay-provoking institution. The reasons calling it into being no longer exist. We no longer need it as a guardian of the lowlier pursuits of life, nor as the shield of the weak against the strong. It brings no succor to the oppressed individual, nor can it longer pose as a bulwark of democracy. The business of the world—that part over which the United States exercises jurisdiction, needs a safer, more economical, and more expeditious adjustment of litigated issues than is practicable by the method of a jury. It is scarcely to be believed any aggregation of untrained minds can as quickly, or as certainly, reach the truth of a complex tale, told in short, and often garbled chapters, by different authors, as will the trained mind, accustomed to sift, analyze and collate details.

It is not to be insisted either, that the Jury System can be abolished by a mere fiat. Even if extinction is desirable an abrupt course would border the revolutionary. The strength of an aggregate of minds over the single mind is still a fact which every strong judiciary ought to call to its aid, and utilize in dealing with property and personal rights.

It is apparent, however, that as now in vogue the Jury System is not growing in favor, and good sense calls for remedial action in cases.

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falling within its purview. The possibility of "fixing the jury," must be removed, as the necessities of civilization must be advanced. As administrators of the law we are compelled to progress, we may not be able to do so as rapidly as the farmer, the surgeon, or manufacturer, but we cannot balk the onward march altogether. It is a duty owing by the living to posterity—owing by the present to the future—that for the enforcement of civic rights through legal procedure, we should seek and adopt the most improved regulations. We ought to be as diligent in this domain as in the application of sanitary matters, to say the least. Both have reference to peace of mind, material comfort, and the wholesome conduct of affairs. To lessen the burdens of society, and increase the general welfare according to the grace within him, is a moral obligation resting upon every man. This obligation is augmented by the numbers effected, and rests upon the legal profession in the ratio their influence bears upon the question involved. What should we suggest in the way of remedy?

If it seems presumption to suggest remedies, what is here put forward is at least topical. It is thought something along the line of improvement, though the merest trail might arouse plans which may ultimately find favor, and the drain on the public in supporting a jury expense in each county throughout the country, might be diverted to more profitable agencies, losing none of the advantages of jury trials, while removing its more glaring defects.

If a number of trial judges, triers of facts solely, drawn from all parts of the state, holding their office for a tenure fixed by law, free from politics, having a salary commensurate with their dignity and duty, hearing cases wherever their deliberations were required, should be created, they could hardly fall in being more efficacious than the jury as now used. Suppose a jury of five men, trained to weigh evidence, free from local influence, because from different localities, listened to controverted issues, and contradictory witnesses, would it not be more likely to reach a right solution than any jury obtainable under existing practice?

There might be enough of these judge jurors in number, when organized into juries of five, the aggregate would dispatch the jury business of the state. They would be a migrating jury—traveling about from place to place, but that would add to their efficiency rather than otherwise, and eliminate the features of local prejudice and environment. Economically, it would be a saving of money as well as time; appeals would be fewer, and delays less. The charge of professional jurors would not apply, the character of the men would be a guaranty of the regularity of their proceedings, and their devotion to their duty;

their mistakes would be reduced to a minimum, and the only questions appealed would be of law.

The idea is not unlike the system prevailing in Germany and has there produced very satisfactory results. In that jurisdiction, all disputed questions of fact, including criminal charges, are tried before three judges, a majority of whom acting in agreement render a verdict. With the plan just proposed, a verdict by the majority should prevail. The opinion of the trial judge would not be entirely lost on such a jury; they could very properly exchange opinions upon the legal bearing of facts, matters of legal inference, and the credibility of witnesses without being open to the charge of domination by the trial judge. This practice, before inauguration, would require constitutional amendments, a process surrounded with such rigid conservatism as insures knowledge of the greater advantage to be introduced. Our courts have long ago, by construction and elucidation, held that trial by a jury of less than twelve, no constitutional objections being present, was a proceeding "by due process of law," and the statutes requiring jurors shall be able to read the English language as a qualification to sitting in the jury box, would not be censured if in addition the juror should be able to understand, and analyze evidence, after listening to it.

Another suggestion would be an increase in the number of judges giving litigants the right to submit their cases upon disputed points, to the consideration of three judges sitting together; or perhaps in the more serious criminal cases, to the opinions of five judges sitting together with a majority verdict. By either process, the advantage of obtaining the average or aggregate opinion of the men sitting in judgment would be preserved, and the application of the various rules that are qualified by the words "ordinary" and "reasonable" would lose none of the sympathy or flexibility which adapts them to the particular circumstances of individual cases. Either of the remedies suggested would vastly improve present conditions, both in efficiency and economy, and are believed worthy of the most careful consideration by the professional and lay interests of the country.

All logic points to the ultimate elimination of every form of jury trial. The processes already at work, toward that end, to some of which allusion has been made, have been the result of necessity. It is time to show activity in aid of the more commendable agencies, saving at the same time all that is desirable in the present system. Suggestions indicated coming from lawyers themselves would meet little resistance by electors, and would doubtless secure legislation to initiate the change. The speed we make will show the energy applied to our own efforts, and will at the same time measure the extent of our desires for legal reforms.

The Community Property Law of Washington and Non-Residents.

MR. GEO. LADD MUNN.

As an offshoot of the Territory of Oregon we inherited a common law jurisprudence singularly free among the Pacific Coast states from the influences of Spanish law and custom which, save in Oregon, have bequeathed the community system of law as a permanent heritage to the western and southwestern fringe of our country. The Oregon laws in force in that territory previously to and at the time of the establishment of Washington Territory were for the most part the codified laws of Iowa of 1843 which, by a single act of the legislature of Oregon, had been adopted as the laws of that territory.

By the act establishing the Territory of Washington the laws of Oregon were continued in force in the new territory, and the principles of common law jurisprudence continued to hold exclusive sway in this territory, so far at least as the property rights of husband and wife were concerned, until December 2, 1869, when the first community property law, which had been copied in the main from the California act of 1850, was put upon the statute books.

This early period prior to the introduction of the community system was one of stagnation in the growth and development of our legal system. The decisions of the territorial supreme court covering this period of fifteen years occupy but two hundred and fifty pages of our reports. The system of community rights once established has remained permanently the groundwork of future legislation and the whole of our jurisprudence has developed with the community system as the basis of the property rights of husband and wife. In the growth of our jurisprudence our laws have recognized the equality of interest in the wife to an extent unparalleled in any of the other states or territories sharing the community system. In only three states is the beneficial interest of the wife in community property on a plane of equality with that of the husband and in this state alone the wife's interest in real estate is a vested and legal one requiring her joinder in every conveyance, except between the spouses themselves.

In this period of thirty-five years, during which the community system has existed, the statutes in relation thereto have undergone several revisions, notably in 1871, 1873, 1879 and 1881. These revisions of the law we shall refer to as the community acts of their respective years.

The community law and particularly the act of 1881, now in force, have been before the courts in one form or another in a very great many cases. The nature and incidents of the property rights created by the statute have been in most aspects carefully defined by adjudication. Community and separate property, so far as legal questions are concerned, have been satisfactorily differentiated in relation to *resident* owners, and the liability to debts of each class of property has been determined with as nice a particularity as would naturally result from the relentless vigilance of the creditor and the desperate plight of the unfortunate debtor. But in its application to *non-resident* owners of property, the community law has been but little adjudicated.

This state has been the theater of very considerable real estate speculation, it has attracted the attention of all parts of our common country, its foreign investors have been a legion, and their interests have often been paramount in value to those of resident owners, so that it is a matter of surprise and one quite difficult of explanation that the nature and extent of the application of our community system of laws to non-residents has been in so small a measure a contention before our courts. In this respect I find the situation to be radically different from that shown by an examination of the authorities of other states sharing the community system of law, and the surprise grows respecting the situation presented here when contrasted with the early days of Texas and California, when non-resident ownership of property in those states must have been inconsiderable in comparison with that existing here.

In the original community act of 1869 sections 11 and 12 were as follows:

"Section 11. In every marriage hereafter contracted in this territory the rights of husband and wife shall be governed by this act unless there is a marriage contract containing stipulations contrary thereto.

"Section 12. The rights of husband and wife, married in this territory prior to the passage of this act or married out of this territory but who shall reside and acquire property herein, shall also be determined by the provisions of this act with respect to such property as shall be hereafter acquired unless so far as such provisions may be in conflict with the stipulations of any marriage contract."

The restrictive provisions of the latter section were considered in

reference to their effect upon non-residents by Judge Hanford in the case of *Hershberger v. Blewett*, 46 Federal, 740, and it was there held that these provisions limited the application of the law to resident married persons. This judgment was but confirmatory of the terms of the act and no decision has ever been reported questioning the correctness of the view taken. No case seems to have been presented to the state or federal courts in Washington involving the force and effect of section 11, which extended the application of the act to parties contracting marriage within the territory without qualification as to their residence then or thereafter. The act of 1869 was repealed by the act of 1871. Section 25 of the latter act was as follows:

"Section 25. The rights of all married persons now living in this territory and of all who shall hereafter live in this territory shall be governed by this act."

This provision does not seem to have been under judicial review, but the elimination of section 11 of the former act making application of the statute to persons contracting marriage within the state plainly restricted the operation of the later act to married persons resident within the jurisdiction. The act of 1871 was repealed on November 5, 1873, and the act of 1873 became effective nine days later, on November 14, 1873. This act was but a re-enactment in the same terms of the original act of 1869. It remained in force until the act of 1879 became effective, on November 14 of that year. In the revision of the community property law enacted by the statute of 1879 the territorial legislature omitted entirely the provisions found in the earlier enactments limiting the application of the law to resident married persons or to persons contracting marriage within the territory. The act of 1879 and all subsequent legislation defining the property rights of husband and wife are general and, so far as their terms disclose, applicable to all acquisitions of property within the territory or state of Washington by non-residents as well as by inhabitants. The effect of the elimination of these restrictive provisions was involved in the decision of *Gratton v. Weber*, 47 Federal, 852, wherein Judge Hanford held the act of 1879 and later legislation applicable to all subsequent acquisitions of real estate without regard to residence. Some of the provisions in the act of 1879 would indicate that it was not the intention of the legislature that it should apply to the acquisitions of personal property on the part of other than resident owners. Section three of that act provided that a certain inventory of the separate personal property of the wife should be recorded in the office of the Auditor of the County in which she resided. Such a provision could, of course, only apply to inhabitants of the territory. In the present revision of 1881 there is no pro-

vision made for filing of such inventory and no expressions are used indicating a differentiation of real and personal property in the application of the law to non-residents.

In the federal case last cited and perhaps in some others, Judge Hanford has indicated, by implication at least, that the application of the community property law of this state relates only to real property acquisitions made by those not resident within the state. Judge Hanford, however, so far as we know, has had no occasion to render a decision with respect to the application of the statute to the acquisitions of personal property by non-residents. In our reading of the state reports we find but little touching the distinction between acquisitions of real and of personal property by non-resident married persons. Some of the language used by the supreme court in its opinion upon the rehearing in *LaSelle v. Woolery*, 14 Wash. 70, would imply that in that case such a distinction might have been made the basis of decision had the facts required. After quoting language of general import from Story on the Conflict of Laws, the court in that case said:

"The character of the property, as regards the question of its being the separate property of either of the spouses or the property of the community consisting of both spouses or otherwise, is fixed by the law of the state where such property, if real property, is situated."

This statement, if it was intended thereby to draw a distinction between acquisitions of real and of personal property as affected by the domicile of the owners, is thought to be in entire accord with general principles of jurisprudence which receive universal recognition.

Passing for a moment the result of this distinction as regards personal property, it seems a universal concession that the law of the *situs* governs as to the rights in, and title to, immoveable or real property. The application of our community laws to non-resident owners of real property is, then, but a question of legislative intent; that intent seems to have been sufficiently shown when the restrictions limiting the application of the law to resident owners were removed and the law made general in its terms and applicable to all property rights of husband and wife without qualification of residence.

In endeavoring to determine the nature and extent of the application of the present community law to non-resident married persons (and that is the only purpose of this paper), it will be of some advantage to consider, in connection with the definitions of the statute a few decisions which have been made by the Washington courts with reference to the rights of persons *resident* in the state.

Under the community law all property of married persons is divided into three classes, the separate property of the wife, the separate

property of the husband and the community property of husband and wife. The statutory definition of the wife's separate property is as follows:

"The property and pecuniary rights of every married woman at the time of her marriage or afterwards acquired by gift, devise or inheritance, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of her husband, and she may manage, lease, sell, convey, encumber or devise by will such property to the same extent and in the same manner that her husband can property belonging to him."

The statute, in like terms, defines the separate property of the husband as follows:

"Property and pecuniary rights owned by the husband before marriage, and that acquired by him afterwards by gift, bequest, devise or descent, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of his wife, and he may manage, lease, sell, convey, encumber or devise by will such property without the wife joining in such management, alienation or encumbrance, as fully and to the same effect as though he were unmarried."

The community property of husband and wife, which is made to include everything not falling within the definitions of the statutes above cited, is thus defined:

"Property not acquired or owned as prescribed in sections 2400 and 2408 (sections above cited) acquired after marriage by either husband or wife or both is community property."

It will be noticed in the statute that by its terms the proceeds of the sale or exchange of the separate property of either husband or wife is not defined as constituting a part of such estate. The statute says that the property owned before marriage and that afterwards acquired by gift, devise or descent with the rents, issues and profits thereof shall constitute the separate property of either spouse. The terms "rents, issues and profits" used in both sections of the statute where definition is made of the separate property of the two spouses have in law, a restricted meaning and do not cover in ordinary signification the proceeds of the *corpus* of the property or the advantages realized by its sale at a price exceeding its cost. The terms in ordinary legal signification relate merely to the earnings and income of property. The mutations or changes of form of separate property of the two spouses are not in terms then provided for by the existing law. But in numerous cases, not necessary to cite, our supreme court has held that where the proceeds of the sale of property, which was the separate property of *resident* spouses, are reinvested, such reinvestment retains its former character as separate property.

In none of these cases, so far as we can discover, has the court referred to these decisions as involving any departure from the language of the statute nor have the judgments been made to refer to any construction of the statutory language consistent with the decisions made, but the court has allowed the cases to stand upon the natural justice and reasonableness of the results achieved. A reading of the authorities of other states where construction has been had of community property statutes similar in language to our own and other considerations, have suggested what may be a proper basis of the decision above noted. Our community statutes appear to have been carefully drawn and to contain words of legal signification and, the legislature may be presumed to have intended from the use of the word "acquire" to draw a distinction between acquisitions of property and mere investments made from former acquisitions.

If the decisions of the supreme court of this state, in determining that the mutations of separate property of resident spouses constitute property of a like character be understood to go on the theory that such mutations or changes of form are not acquisitions of property within the meaning of the word "acquire" as used in the community statutes, such a theory of construction becomes an aid in determining the application of the community property law to non-residents as the distinction between acquisitions of property in this state and the investment here of proceeds of acquisitions made elsewhere will obviate the chief difficulties and some constitutional objections which present themselves upon an attempt to extend the law of community to the property of non-residents.

A hasty reference to the status of present adjudication in the matter of the extension of our community laws to non-residents may be of interest and value.

The case of *Gratton v. Weber*, 47 Fed. 852, was an equitable proceeding to partition certain lands situated in Clallam county wherein complainant claimed a community interest. The lands were purchased in 1884 by complainant's husband, who was then, and remained to his death a resident of Oregon. There was nothing in the record to show how the funds used in the purchase were accumulated. Judge Hanford merely held that the community law in force at the date of purchase (1884) was applicable to acquisitions of real estate within the territory by non-residents as well as by inhabitants.

"Property acquired by purchase by a married person," said Judge Hanford, "is presumed to be community property and there is no evidence in this case to overcome that presumption as to the land in controversy."

Had the record disclosed that the property was purchased by the husband with funds that had been accumulated in the state of his domicile and that such funds were his separate property when invested in the lands purchased here the decision of the court, we believe, would have been different.

In the case of *Morgan v. Bell*, 3 Wash. 554, Bell, as a married man, resident in Ohio, purchased certain lands in Washington Territory in 1888. After the purchase of this property and before the execution on his part of a contract to sell the same, his wife, also a resident of Ohio, died, leaving a minor child. In an action for the specific performance of the contract of sale or for damages in lieu thereof, Bell set up in his answer "that the money used in purchasing said land was not owned by him at the time of marriage, or acquired after marriage by gift, devise, bequest or descent," that by reason of such facts and the community laws of Washington, of which he had been ignorant, he was not the sole owner of said property and was unable to perform his contract. The Supreme Court remanded the case to the lower court, with instructions to dismiss the action. In this case it was conceded on both sides that at the time the contract was made the title was not in Bell and that he could not perform his contract. Upon the concessions made by counsel the decision of the case was doubtless correct, but the language of the answer indicates that the community character of the estate was supposed to be conclusively shown when it was admitted that the funds used in the purchase of the property were not acquired by Bell before marriage or afterwards by gift, devise, bequest or descent, even though the funds were wholly acquired in Ohio, (where both husband and wife were domiciled) under laws which made the funds so acquired the separate property of the husband.

This case, by reason of the admissions of counsel, cannot be regarded as a decision upon the question of the application of the community laws to real estate acquisitions made in this state by non-residents, but the case has doubtless colored the views of its readers and added its contribution of confusion to the whole matter.

We have found in the State Reports but two cases which bear directly upon the matter now under consideration, viz: the limitations in the extension of the community laws to non-residents growing out of the distinction between acquisitions made in Washington and investments made in Washington from acquisitions made elsewhere.

These are the cases of *Freeburger v. Gazzam*, 5 Wash. 772 and *Elliott v. Hawley*, 34 Wash. 585.

In the former case (*Freeburger v. Gazzam*), certain personal property had been seized upon an execution against the husband and the

wife undertook to recover possession as separate owner of the property seized. The opinion is short and unsatisfactory. No full statement of the facts is given. It appears as probable that the property in question was secured by purchase in this state by the wife after removal here of both husband and wife and that the funds used in the purchase were separate funds of the wife acquired in the state from which the spouses had removed. The court says:

"If it was true that Mrs. Freeburger had funds accumulated in the State of Kansas, which were there subject to her own disposition and were not liable for her husband's debts and she brought them to this state and invested them in these goods, the goods are not community property or subject to the husband's debts here. Whatever the property may have been called in Kansas, it was in effect her separate property and the laws of this state do not undertake to change the status or liability of such property merely by its coming across our border."

The case of *Elliott v. Hawley* is a case of more value. The Freeburger case, just referred to, involved the status of personal property acquired in this jurisdiction, after change of domicile, while in the Elliott case the status of real property was involved. The court decided that, upon the facts stated, certain money which was acquired by a married woman in Alaska, who had never been resident of Washington, was her separate property under the laws of the place of its acquisition and that when that money was brought here and invested in real estate, the property still remained her separate estate.

No case, strange as it may seem, has yet been decided in our state supreme court involving this most common state of affairs, viz: a purchase of real property in Washington by a non-resident husband, domiciled with his wife in a common law state, where the funds used in the purchase were acquired in the state of their domicile by the joint efforts of husband and wife and in such manner as to constitute their community character had the acquisitions been subject to our community laws; but where the said funds were by the law of the place of their acquisition the separate property of the husband and where the status of property so purchased in Washington had in no way been affected by change of domicile.

A condition of ownership of real estate as above outlined is a matter of everyday experience in the life of every lawyer in this jurisdiction, and that such a constantly recurring situation should not have resulted in litigation which reached our highest court is passing strange.

In the Freeburger and Elliott cases, which we have cited, it will be noticed that the court in effect makes a distinction between the acquisi-

tion of property in Washington and an investment here from the proceeds of prior acquisitions made in other jurisdictions. If such a distinction was not in the mind of the court, then the decisions involved plainly an enlargement of the scope of the statutory definition of separate property and departure from its language.

The community statutes of California, like those of Washington, are general in their terms and applicable to all acquisitions of property in California by married persons, without regard to residence, and the definitions of separate and community property correspond with our own, and a long line of such cases, without dissent, establishes the rule in that state that vested rights of property acquired in a foreign state or country by married persons there domiciled, will not be divested by taking such property to California on a change of domicile, or by investments made in that state from the proceeds thereof.

The decisions of Texas and Louisiana also recognize the inviolability of acquisitions made in foreign states prior to change of residence or investment. This distinction, which has been made several times in this paper between acquisitions of property in a state and the investment there of prior acquisitions made elsewhere, has been made the basis of decision in determining the character of property, in construing the community laws of Texas and Arizona and by implication at least in California.

A very interesting case which recognizes the distinction just noted and which bears upon the inviolability of vested rights as between husband and wife is that of *Depas v. Mayo*, 11 Mo. 314. In this case, property which had been acquired in Louisiana and which was community property under the laws of that state, was sold and the proceeds were taken on a change of domicile to Missouri, a common law state, and there invested in real estate, the legal title being taken in the name of the husband. After a divorce was had between the parties, the wife, who in the meantime had returned to Louisiana, by a proceeding in equity taken in Missouri, endeavored to establish a trust in said property in her favor for a one-half interest; the complainant's theory in that case being that real estate purchased in Missouri with the community funds acquired in Louisiana, would retain its community character so far at least as the beneficial interests were concerned. The court, after stating that the purchase of the real estate was not an acquisition of property in Missouri, but a mere investment of moneys previously acquired in Louisiana, held that the whole matter involved but a change in the character of the property from personalty to realty and enforced the trust as sought.

The attempt to classify property acquired by purchase by non-resi-

dents with reference solely to the definitions of our statutes respecting separate and community property—if the distinction we have noted is to be disregarded—would be to give to those statutes an extra-territorial force and effect. It would fix by our laws the character of property acquired by non-residents in the state of their domicile, and such a construction of our statutes involves a divestiture of rights acquired under other laws by the mere process of crossing our state line.

That the vested rights of husband and wife, notwithstanding the peculiar relations existing between them, are nevertheless protected from confiscation and forced divestiture by constitutional provisions, was clearly established by a decision of the Supreme Court in California, in construing as unconstitutional the statute which formerly provided that the rents, issues and profits of the wife's separate property should constitute the community property of both spouses.

In the Circuit Court of Appeals of this circuit, Judge Ross, in the case of *Seeber v. Randall*, 102 Fed. 215—when, however, no decision was called for under the facts of the record—indicated that the provisions of the constitution of the United States would protect the vested rights of either spouse from spoliation by legislative act, though the effect of the legislation was but to convert separate into community property.

A consciousness that this paper may have already expanded to forbidden lengths, suggests that the views already presented, and perhaps one or two others, be briefly summarized and this paper concluded:

First: The application of our community laws to acquisitions by non-residents married persons of real property in Washington may be regarded as settled law.

Second: The limitations in the application of the community system to non-resident real estate owners, should properly respect the distinction between acquisitions of property in Washington and investments from prior acquisitions made elsewhere.

Third: The vested rights of either spouse in separate property cannot be divested by an attempt to extend the law of community to non-residents.

Fourth: A comity of universal recognition among the states regards personal property as having no *situs* apart from the domicile of the owner, saving such rights therein as may be acquired by creditors by means of attachment or some other process.

As the husband is given full power of disposition of community personal property and as its transmission by inheritance or bequest is clearly subject to the laws of the domicile, the question of the application of the community law system to the acquisitions of personal prop-

erty by non-residents will probably only arise in litigation respecting the collection of debts and then only when the property has been reached by process and when under the exception above noted it may be treated as having a *situs* in the jurisdiction in which it is found.

It is a rule of universal experience that rules of comity, when of doubtful application or force, yield always to the law of the forum. Hence, when the question of the application of our community system of laws to non-resident acquisitions of personal property shall be a matter for adjudication before our courts, the rule of comity that personal property has no *situs* apart from the domicile of its owner and that its acquisition must be considered as made in the state of his residence and subject to the laws of such state, will weigh but little in the deliberations of the court and the community statutes held applicable or otherwise, on other grounds.

Is the Provision of Our State Constitution Relative to Private Ways of Necessity in Conflict With the Fourteenth Amendment.

C. C. GOSE, WALLA WALLA.

In Article 1, Section 16, of our State Constitution, is to be found, among others, the following provision:

"Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes or ditches on or across the lands of others, for agricultural or sanitary purposes."

The apparent intent and meaning of this clause of our Constitution is that for the certain enumerated purposes, private property may, by legislative authority, be taken from an unwilling owner and given over to the free use and enjoyment of a private individual; that such private individual, after acquiring property in this manner, may use, apply and enjoy such property to his own exclusive pleasure and advantage, so long as he may use and apply it for the purposes enumerated in the Constitution.

The very fact that the makers of our Constitution used the words: "Private property was not to be taken for private use except for the enumerated purposes," conclusively shows that in their minds the enumerated purposes were strictly private uses; that they had in mind the necessity and the advisability of permitting the condemnation of property for certain private uses, in addition to the right of condemnation formerly enjoyed throughout the United States for strictly public purposes. It would seem to be the opinion of the makers of our Constitution that private roadways, drains, flumes and ditches were liable to be needed by individuals in order to obtain a proper enjoyment of their property. No pretense is made that such a user is a public user; but, on the other hand, the very words used in the constitutional provision, convinces us that the makers of the Constitution were attempting to extend the right of eminent domain, so as to allow the condemnation of private property to be made by private individuals, to be used by them for their own private enjoyment. It was evidently believed that there are certain objects which private individuals, working to their own private ends, might wish to enjoy; and that it would be for the

best welfare and advantage, not only of such private individuals, but of the state at large as well, that provision should be made in the Constitution to force unwilling owners to yield their property rights to the advantage of others, wishing to obtain a special, limited and exclusive enjoyment of them.

There are certain fundamental rights, coming down to us from time immemorial, which, even in the absence of constitutional restraints, no Government worthy of the name should attempt to interfere with.

It has always been recognized by our Courts, both state and national, to be fundamental that the citizen held his property free from all interference by any one other than the state or national governments, and only by the state and national governments for the proper execution of governmental functions and duties.

The citizen may be called upon at need to give a part of his property, or to sacrifice the whole of it, to his government for a proper public purpose, when the government seeks to take it either under the power of eminent domain or through the guise of taxation. If the needs of the Government are such as to require a part, or even the whole of one's property, for the purpose of supporting and maintaining it, the citizen's property must yield to the power of taxation. The preservation of the Government, the exercise of its functions and duties, are the citizen's sole reward. In the exercise of the right of eminent domain, the State may require the individual to yield his property for any public purpose. In return for so yielding his property, the citizen is entitled to a compensation equivalent to his damage. What is a public purpose, depends, in some small degree, upon the rules of decisions laid down by the Supreme Court of the State in which the question may arise, although the overwhelming line of authority is to the effect that "public use" means the same as "use by the public."

So far as I have been able to ascertain, no Court in the United States has ever held that the property of an individual may be taken under the power of eminent domain for any other than a public purpose; and, with the exception of apparently recent cases in the states of Colorado, Utah, Nevada and Montana, and the Territory of Arizona, the right of the public to use upon demand, and within the reasonable conditions imposed by the party seeking to condemn, the property taken, or the business fostered and created by the taking, has always been regarded as a criterion for determining whether the use for which the property was sought to be taken, was a public or a private use. If the public had a right to demand from the taker the enjoyment of that which he had taken, the use was a public. If, however, the public had

no such right, and the taking was for the exclusive use of the party seeking to condemn, then the use was always held to be a private one, and the right of condemnation denied.

The use for which property may be taken under the right of eminent domain has generally been held to be such use as I have mentioned. Mere public advantage, the prospect of aiding in the state's development, the building up of private enterprises, or the enabling of an individual to better conduct his affairs, have not generally been held to be such interests as would authorize the state to allow the condemnation of one man's property for another man's use, enjoyment or benefit. Cases without number might arise in which the giving of one man's property to another might be of the highest benefit and advantage to the state. What one man neglects, another might foster and develop. The state is always advantaged by an increased prosperity of its citizens, or by the development of its latent resources. We have all seen the unfortunate results of opportunities neglected; but none of these should be sufficient to authorize the state to choose between individuals in the ownership of property. Each citizen should be left to use and enjoy his property as he sees fit, regardless of any advantage that might be gained by giving it to another citizen, who might put it to a more satisfactory use. In other words the right of eminent domain has not generally been considered to be, and should not be, a matter of public policy, *but rather a right exercised by the government in the necessary execution of government affairs.* Our own Supreme Court, in the case of *Healy Lumber Co. v. Morris*, (33 Wash., 490), has taken this view of the case, and I offer the following quotation from the decision at page 505:

"It might be of unquestionable public policy, and for the best interests of the state, to allow condemnation of lands in every instance where it would result in aiding prosperous business enterprises which would give employment to labor, stimulate trade, increase property values, and thereby increase the revenues of the state, even if the enterprise was purely private. For such is the relation, under our form of government, between public and private prosperity, that one cannot be enjoyed to any appreciable extent without favorably influencing the other. But it is evident that this was not the kind of public use that was within the minds of the framers of the Constitution; and it seems to us that the logic of those Courts which have sustained appellant's contention is justified solely on grounds of public policy."

Our court in this case arrives at the conclusion that that only is a public use which is subject to actual use and enjoyment by the

public, and very wisely concludes that any other rule places absolutely no limitation upon the power of the legislature to take property under the power of eminent domain; that, if the question be one of public policy, the legislature might conclude that the brewer, the baker, the merchant or the farmer should be authorized to condemn his neighbor's property and apply it to his own use and enjoyment.

If our constitutional provision above mentioned means anything, it would seem to mean that individuals desiring private ways of necessity, or a way for a drain, a flume or a ditch, to be used either for domestic, agricultural or sanitary purposes, may, upon legislative sanction, condemn rights-of-way for those purposes; that, for these particular purposes, the individual may take and use the private property of another individual under the power of eminent domain. If "public use" means "use by the public", as ruled by our Supreme Court, then ways of necessity must be strictly private uses.

By the first section of the 14th amendment to the Constitution of the United States, among others, the following provision is made:

"Nor shall any state deprive any person of life, liberty, or property, without due process of law."

No court has ever attempted to define in the abstract what constitutes "due process of law"; but rather it has been the policy of the courts to take the particular facts of the case under consideration, and to determine from those facts whether the end sought to be obtained would be a deprivation of life, liberty or property, without due process of law.

It seems to be pretty well settled, in so far as procedure is concerned, that, if a party be given due notice and an opportunity to be heard in the proper tribunal, he is not denied due process of law. There is, however, another side of the question: *Substance*, as well *form*, is to be considered. The object of the statutory proceeding is to be taken into account. Every opportunity for notice and for a proper hearing in the proper court may be given, and yet the object of the proceeding may be such as to deprive a person of his life, his liberty, or his property, without due process of law. It is not within the power of the state to authorize any and every act, nor to render such authorization valid by simply allowing the party against whom a proceeding is brought notice and an opportunity to be heard. *The private property of one man cannot, under any form of procedure, be taken from him against his will and given to another individual. Any statute, any constitutional provision, which seeks to do this, is violative of the Fourteenth Amendment.* The owner of property is entitled to say to whom he will sell it, and upon what terms he will sell. The needs of his neighbors can never demand from him a transfer of his title to them.

In *Taylor vs. Porter* (4th Hill, 140), the New York Court had under consideration an attempted condemnation of a private right-of-way of necessity, and Judge Bronson, in discussing the law of the case, used the following language:

"The power of making bargains for individuals has not been delegated to any branch of the Government. Under our form of Government the legislature is not supreme. When one man wants the property of another, I mean to say that the legislature cannot aid him in making the acquisition."

* * *

"The security of life, liberty and property lies at the foundation of the social compact; and to say that this grant of legislative power includes the right to attack private property is equivalent to saying that the people have delegated to their servants the power of defeating one of the great ends for which the government was established. If there was not one word of qualification in the whole instrument, I should feel great difficulty in bringing myself to the conclusion that the clause under consideration had clothed the legislature with despotic power; and such is the extent of their authority, if they can take the property of A, either with or without compensation, and give it to B. The legislative power of the state does not reach to such an unwarrantable extent. Neither life, liberty, nor property, except when forfeited by crime, or when the latter is taken for public use, falls within the scope of the power."

Mr. Justice Story, in *Wilkinson vs. Leland* (2 Pet., 657), says:

"The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred. At least, no court in this country would be warranted in assuming that the power to violate and disregard them—a power so repugnant to the common principles of justice and civil propriety—lurked under any general grant of legislative authority, or ought to be implied from any general expressions of the will of the people. The people ought not to be presumed to part with rights so vital to their security and well-being, without very strong and direct expressions of such an intention. We know of no case where a legislative act to transfer the property of A to B, without his consent, has ever been held a constitutional exercise of legislative power in any state in the Union."

Chancellor Kent, in his Commentaries, in considering the decision of Judge Bronson, before mentioned, and other cases of like character, says:

"I apprehend that the decision of the Court was founded on just principles, and that taking private property for private use, without

the consent of the owner, is an abuse of the right of eminent domain and contrary to fundamental and constitutional doctrine in American and English law."

In *Clark vs. White* (2nd Swan, 540), the Supreme Court of Tennessee, having before it a way of necessity of the same character as the one discussed by Judge Bronson in the New York case, lays down the following rule:

"Now, the statute confers power upon the County Court to grant a right-of-way against the person who owns the land. It takes from him *in invitum* a part of his estate and gives it to another, as a private right, for such indemnity as a jury may assess. Now, we deny that any such power exists under the Constitution of the state. The right to private property is under the protection of the Constitution, and should be held as sacred and inviolable. The legislature has no power to take or invade it for any mere private use, or to transfer it from one person to another against the will of the owner, whether indemnity be provided by it or not. The will of the owner is, in this respect, stronger than the legislative power; and, if he refuses to grant the private way, we are not aware of any power by which he may be forced to grant it."

The legislature of the State of Nebraska enacted a law authorizing private individuals to condemn sites along the right-of-way of railroads in the state, for the purpose of erecting elevators thereon, to be used for the purpose of storing grain. The statute was sustained by the Supreme Court of Nebraska and held to be a proper exercise of legislative power; but, upon error to the Supreme Court of the United States, that court reversed the ruling of the state court and held that the statute in question was violative of the 14th amendment in that it was a denial of due process of law to the party from whom the land was sought to be taken. The Court says:

"This Court is unanimously of the opinion that the order in question, so far as it required the railroad corporation to surrender a part of its land to the petitioner for the purpose of building and maintaining an elevator upon it, was, in essence and effect, a taking of the private property of the railroad corporation, for the private use of the petitioners. The taking by the state of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the 14th article of amendment to the constitution of the United States."

The case from which I have just quoted is *Missouri Pacific Railway Company vs. State of Nebraska* (164 U. S., 403.).

Justice Miller, in *Citizen's Saving and Loan Association vs. Topeka* (89 U. S., 653), in discussing the right of the Government to take

the private property of one person and confer it on another, says:

"It must be conceded that there are such rights in every free government beyond the control of the state. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all, but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but none the less a despotism. It may well be doubted, if a man is to hold all that he is accustomed to call his own—all in which he has placed his happiness and the security of which is essential to that happiness—under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man rather than by many. There are limitations on such power which grow out of the essential nature of all free governments, implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No Court, for instance, would hesitate to declare void a statute which enacted that A and B, who were husband and wife to each other, should be so no longer, but that A should thereafter be the husband of C, and B, the wife of D; or which should enact that the homestead now owned by A should no longer be his, but should henceforth be the property of B. To lay, with one hand, the power of the Government on the property of the citizen, and with the other to bestow it upon favored individuals, to aid private enterprises and build up private fortunes, is none the less a robbery, because it is done under the forms of law and called taxation. This is not legislation. It is a decree under legislative forms."

Justice Bradley, in *Davidson vs. New Orleans* (96 U. S., 102), says:

"I think, therefore, we are entitled under the 14th amendment, not only to see that there is *some* process of law, but '*due process of law*' provided by the state law, when a citizen is deprived of his property; and that, in judging what is '*due process of law*' *respect must be had to the cause and object of the taking*, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvement, or none of these; and, if found to be suitable or admissible in the special case, it will be adjudged to be '*due process of law*'; but, if found to be arbitrary, oppressive and unjust, it may be declared to be not '*due process of law*'."

It should require no argument to support the proposition that states, in the creation of constitutions, are as much amenable to the 14th amendment as are legislatures when seeking to enact statutes; that both constitutional and statutory law are limited and subject to the 14th amendment.

In *Fallbrook Irrigation District vs. Bradley* (164 U. S., 112), the Supreme Court of the United States says:

"The question whether private property has been taken for other than a public use is a Federal question; notwithstanding the absence of any provision in the Federal Constitution which acts upon the states, against the taking of private property for any but a public use, when the taking for any other is alleged to be deprivation of property without due process of law."

In the case of *in re Ziebold* (23 Fed., 79), the following language is used by the Court:

"The first matter of inquiry is the meaning of the term 'due process of law'. If it has no broader meaning than process prescribed by the legislature, it is the end of the case. But such a construction would render the constitutional guaranty mere nonsense, for it would then mean 'no state shall deprive a person of life, liberty or property unless the state shall choose to do so'. It has repeatedly been held and uniformly been adjudicated that the terms 'due process of law' and 'law of the land' have a broad and comprehensive meaning, and originated in that great bill of rights, Magna Charta, and operate as a restriction on each branch of civil government. The words, 'due process of law', then, must be directed at something deeper than the mere rules and forms by which courts administer the law. They evidently were intended to guarantee and protect some real and substantial right to life, liberty and property as the ultimate result, and probably to prohibit any arbitrary and oppressive proceedings by which the individual is deprived of either. There are certain things that are manifestly obnoxious to this provision. For instance, the property of one person cannot be taken from him for private use and given to another, even though he is compensated for it, and is given every opportunity to be heard through all the forms and solemnity of judicial proceedings."

Judge Cooley, in his work on Constitutional Limitations, at page 437, says:

"But there is no rule or principle known to our system under which private property can be taken from one person and transferred to another for the private use and benefit of such person, whether by general law or special enactment. The purpose must be public, and must have reference to the needs or convenience of the public, and no reason of general public policy will be sufficient to validate other transfers when they concern existing, vested rights."

In 1894 the State of New York passed the following amendment to its constitution:

"General laws may be passed permitting the owners or occupants

of agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches, and dykes upon the lands of others, under proper restrictions, and with just compensation; but no special laws shall be enacted for such purposes."

Under this constitutional provision, an action was brought in the state court to condemn a right-of-way for a drain, and the Supreme Court of New York, in the case reported in 163 New York, at page 133, held the constitutional provision violative of the 14th Amendment to the constitution of the United States, for the reason that it was an attempt to take the private property of one individual and confer it upon another, and, therefore, a denial of "due process of law." The court says:

"It is an ancient principle which entered into our social compact, that the use for which private property may be taken must be a public one, whether the taking be by the right of eminent domain or by that of taxation. The sovereign power is incapable of conferring any right to interfere with private property, except it be made for public objects. To take land for another object than a public use; to take it from one citizen and transfer it to another, even for a full compensation, would be to violate the contract by which the land was originally granted by the Government."

"The 14th amendment to the Federal constitution, in prohibiting a state from depriving any person of life, liberty or property without due process of law, protects the citizen against the taking of his property for any other than a public use, whether under the guise of taxation, or by the assumption of the right of eminent domain. It is a security against the arbitrary spoliation of property."

In *People vs. Smith* (21 New York, page 598), Judge Denio says:

"It would not be due process of law to appropriate the property of one citizen for the use of another, or to confiscate the property of one person or class of persons, or a particular description of property, upon some view of public policy, where it could not be said to be taken for a public use."

The cases in which the principle that private property cannot be taken under the right of eminent domain for uses other than public are too numerous to admit of citations. If an attempt were made in this paper to cite, quote from, and discuss them, it would be entirely too long for the purposes for which it is written. Courts, almost without number, have declared that private property cannot be taken for private use. The highest courts of Iowa, of Oregon, of Indiana, of Missouri, of Illinois, of Tennessee, of New York, of Nebraska, of Alabama, of Wisconsin, of West Virginia, and of Kansas, have declared

void statutes authorizing the creation of private roads and the condemnation of rights-of-way for the same, upon the ground that statutes of this character attempt to authorize the taking of private property of one person, *against his will*, and the conferring of it upon another for his exclusive use and enjoyment; and the Courts construe such statutes as containing in their provisions a denial of due process of law.

The only Court in the United States, as far as I am able to discover, that has ever sustained such a statute against the objection of its being void as a denial of "due process of law", is the Supreme Court of the State of California. The decision has been repeatedly criticised by Courts and text-writers.

The Supreme Court of California held such an act valid by legislating into the act provisions which clearly turned a private road into a public highway. Mr. Lewis, on Eminent Domain; Elliott, on Roads and Streets; and Cooley, on Constitutional Limitations; all regard the rule that *private property cannot be taken for private use* as absolutely settled.

A number of the states have a constitutional provision similar to the one of our own state, now in question; and, in a discussion of them, in a note to the 88th American State Reports, at page 931, it is remarked:

"Where such provisions exist with reference to the particular uses covered by them, the courts have no right to question the validity of legislative action taken thereunder, on the ground that the use is not public. As to these uses, the necessity that they may be of a public nature is removed by the constitutional provisions."

Cases from the highest courts of Alabama, California, Colorado, Missouri, Montana, and South Carolina are cited in support of the text. The reading of the cases disclose the fact that they wholly fail to support the writer's statement. Some of the cases do permit the condemnation of private property for apparently private use, but in none of them is the question at issue here either discussed or suggested.

Our own court, in 39 Wash., at page 31, has sustained the condemnation of a private ditch-way. The point that such a taking is violative of the 14th amendment seems never to have been raised. At least there is nothing in the opinion from which we can so infer.

Judge Brannon, in his treatise upon the Fourteenth amendment, at page 307, considering the Tuthill case, decided by the New York Supreme Court *supra*, uses the following language:

"I do not clearly see that a state cannot, by its constitution, take private property for private use, with compensation, unless we are

able to assert that general doctrine, which is asserted by some, that there be some acts, such as taking one man's property for another's use, that a state cannot authorize, even though unrestrained by constitutional prohibition. Judge Story so asserted. Others have made this broad declaration; but where the constitution does not say nay, the state is omnipotent. Where will you find its limit of lawful rein? Only in some vague doctrine that it is violative of the abstract, fundamental principle of republican government."

The honorable author seems to have used these expressions in total forgetfulness of the subject upon which he has treated. Does he mean to imply that state constitutions are to be above the 14th amendment? Does the 14th amendment limit the power of state legislatures, and yet leave the state free to do as it sees fit, by constitutional provision? Th propounding of the questions carries with it its own answer.

Judge Brannon, however, has, on other pages of his treatise, directly refuted his statements above quoted. At page 160, the author, in discussing the principle that property can be taken from an individual for public purposes only, quotes with approval from Justice Miller in *Loan Association vs. Topeka* (20th Wallace, 655), heretofore cited, the following language:

"There is no such thing in the theory of our Governments, state or national, as unlimited power. The executive, the legislative and the judicial departments are all of limited and defined powers. There are limitations of such powers which arise out of the essential nature of all free governments, implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. Among these is the limitation of the right of taxation, that it can only be used in aid of a public object within the purpose for which governments are established. It cannot be used in aid of a private enterprise.

And again the author at page 163 says:

"Private property is sacred. It cannot be taken from one man for the mere private use of another, even with full compensation. The purpose of its condemnation must be public, either for the use of the state, or for the use of some corporation chartered by the state for the performance of functions deemed public, for transportation or other public benefit. Condemnation for such public purposes must be with compensation. If the condemnation is for any other than such public purpose, and is merely for the private use or convenience of another man, it is a gross violation of the Fourteenth amendment, as also of the state constitutions."

And again at page 469:

"In another connection, to which I refer, I have stated fully that the power of eminent domain can be exercised for public purposes only, and that it is a misapplication of that power, and unconstitutional, to condemn one man's property for the merely private use of another. This is fully shown in an opinion by Justice Harlan in *Chicago, Burlington & Quincy R. R. Co. vs. Chicago*, (166 U. S. 235.)."

In the light of the authorities, federal and state; of text-writers and commentators, upon the subject, I have been led to believe that our constitutional provision in question is void as being violative of the Fourteenth amendment. If "use by the public" and "public use" are synonymous terms, as asserted by our Supreme Court in 33 Wash., 490. I have no doubt that our constitutional provision would be held to be violative of the fourteenth amendment; but, since writing the foregoing, I have met with a decision of the United States Supreme Court in the case of *Clark vs. Nash*. In the 25th Supreme Court Reporter, at page 676, wherein a statute of the State of Utah, authorizing an individual land-owner to condemn a right-of-way across the land of his neighbor, for the purpose of conveying water for irrigation, is held to be a valid exercise of the power of eminent domain; and the use to which the water is to be applied is held to be a public use; Mr. Justice Harlan and Mr. Justice Brewer dissenting.

I trust that what I have to say in regard to this decision will be taken in the spirit in which it is offered. I feel that I am placed in a peculiar position by reason of the fact that I had written this paper in good faith prior to the publication of the decision of the United States Supreme Court, just referred to, and that such fact entitles me to make some comment upon the decision of the United States Supreme Court.

The Court, at page 678 of the opinion, has this to say:

"In some states, probably in most of them, the proposition contended for by the plaintiffs in error would be sound. But whether a statute of a state permitting condemnation by an individual for the purpose of obtaining water for his land, or for mining, should be held to be a condemnation for a public use, and, therefore, a valid enactment, may depend upon a number of considerations relating to the situation of the state and its possibilities for land cultivation, or the successful prosecution of its mining or other industries. Where the use is asserted to be public, and the right of the individual to condemn land for the purpose of exercising such use is founded upon or is the result of some peculiar condition of the soil or climate, or other peculiarity of the state, where the right of condemnation is asserted under a state statute, we are always, where it can fairly be done, strongly

inclined to hold with the state courts, when they uphold a State statute providing for such condemnation. The validity of such statutes may sometimes depend upon many different facts, the existence of which would make a public use, even by an individual, where, in the absence of such facts, the use would clearly be private. Those facts must be general, notorious and acknowledged in the state, and the state courts may be assumed to be exceptionally familiar with them. They are not the subject of judicial investigation as to their existence, but the local courts know and appreciate them. They understand the situation which led to the demand for the enactment of the statute, and they also appreciate the results upon the growth and prosperity of the state, which, in all probability, would flow from a denial of its validity. These are matters which might properly be held to have a material bearing upon the question, whether the individual use proposed might not in fact be a public one."

And again the Court says:

"This Court has stated that what is a public use may frequently and largely depend upon the facts surrounding the subject, and we have said that the people of a state, as also its courts, must, in the nature of things, be more familiar with such facts, and with the necessity and occasion for the irrigation of the lands, than can any one be who is a stranger to the soil of the state, and that such knowledge and familiarity must have their due weight with the State Courts." (Citing the Fallbrook Irrigation District case.)

The Court then says, in relation to the Fallbrook Irrigation case, that the case did not directly involve the right of a single individual to condemn land under a statute providing for that condemnation."

And further the Court says:

"We are, however, as we have said, disposed to agree with the Utah Court with regard to the validity of the State statute which provides, under the circumstances stated in the act, for the condemnation of the land of one individual for the purpose of allowing another individual to obtain water from a stream in which he has an interest, to irrigate his land, which otherwise would remain absolutely valueless."

I respectfully submit that all of this is a remarkable argument, and does not in any way support the Court's conclusion that the use by one individual is in any sense a public use. It might well be said of the conclusion that it is based upon the old adage that "Necessity knows no law." If the Court had been disposed to base its decision upon either authority or reason, one would be better able to determine the length to which the decision goes; but the opening statement of the Court, above quoted, to the effect that in some of the states, probably in most

of them, the proposition contended for by the plaintiffs in error would be sound—that is, to say, the proposition of taking one man's property for the use of a single individual is not the taking for a public use—renders it utterly impossible for any one to determine how much or how little of our constitutional provision is valid. If the local conditions are to be the determining test, we might well say that our constitutional provision allowing condemnation for rights-of-way for irrigating ditches is invalid west of the Cascade Mountains and valid east of them.

We all know that the conditions in the two sections of the state are totally dissimilar. The logical result of the Court's decision is to make that "due process of law" in one state, which is not "due process of law" in another state. A certain elasticity is given to the 14th amendment when applied to certain states, and withdrawn from it when applied to other states.

The Court again says:

"But we do not desire to be understood by this decision as approving of the broad proposition that private property may be taken in all cases where the taking may promote the public interest and tend to develop the natural resources of the state. We simply say that in this particular case, and upon the facts stated in the findings of the Court, and having reference to the conditions already stated, we are of opinion that the use is a public one, although the taking of the right-of-way is for the purpose simply of thereby obtaining the water for an individual."

The logical legal consequence of this language is that what is a public use shall in the future depend upon the individual opinions of the judges called upon to decide the question, without any rule or criterion to aid them in its determination.

As was said by the New York Court in *Bloodgood vs. Mohawk Railway Company* (18 Wend., 9):

"When we depart from the natural import of the term, "public use", and substitute for the simple idea of public possession and occupation that of public utility, public interest, common benefit, general advantage or convenience, or that still more indefinite term, public improvement, is there any limitation which can be set to the exercise of legislative will in the appropriation of private property. The moment the mode of its use is disregarded, and we permit ourselves to be governed by speculations upon the benefits that may result to localities from the use which a man, or set of men, propose to make of the property of another, that moment we are afloat, without any certain principle to guide us."

And again:

"Can the constitutional expression 'public use' be made synonymous with 'public improvement' or 'general convenience, and advantage', without involving consequences inconsistent with the reasonable security of private property, much more, with the security which the constitution guarantees. If the incidental benefit resulting to the public from the mode in which individuals, in the pursuit of their own interests, use their property, will constitute a public use of it within the intention of the Constitution, it will be found very difficult to set limits to the power of appropriating private property."

Mr. Lewis, in his work on Eminent Domain, at Section 165, says:

"Public use means the same as use by the public."

And this, it seems to us, is the construction the words should receive in the constitutional provision in question. The reasons which incline us to this view are:

(1) That it accords with the primary and more commonly understood meaning of the words.

(2) It agrees with the general practice in regard to taking private property for public use in vogue when the phrase was first brought to use in the earlier constitutions.

(3). It is the only view which gives the words any force as a limitation, or renders them capable of any definite and practical application.

If the constitution means that private property can be taken only for use by the public, it affords a definite guide to both the legislatures and the Courts.

Mr. Cooley, in his work on Constitutional Limitations, at page 652, says:

"Nor could it be of importance that the public would receive incidental benefits, such as usually spring from the improvement of lands or the establishment of private enterprises.

"The public use implies a possession, occupation and enjoyment of the land by the public at large, or by public agencies. Due protection of the rights of property will preclude the Government from seizing it in the hands of the owner and turning it over to another on vague grounds of public benefit, to spring from the more profitable use to which the latter may devote it."

All of these authorities are quoted with approval by our own Court in the case of *Healy Lumber Company vs. Morris*, heretofore cited. The Supreme Court of our State, having laid down the rule that "public use" and "use by the public" are synonymous, and that the Court in determining whether or not a certain use is public, is not to take into account anything of public policy or of public advantage. Another

interesting question arises as to whether the decision of the United States Supreme Court in the Utah case would be followed by that court in a case arising in the State of Washington.

A careful consideration of the cases from the United States Supreme Court leads me to believe that the rule laid down in that case will not be extensively sustained, and I am still inclined to believe that those parts of our constitutional provision providing for the condemnation of private ways of necessity, and for drains, are violative of the 14th amendment.

The Development of the Law of Labor and Labor Organizations

HARVEY L. JOHNSON.

(The secretary has used his utmost endeavor to obtain Mr. Johnson's paper for publication. Shortly after the session Mr. Johnson withdrew his paper from this office for the purpose, I am informed, of loaning it to parties who had made request for the same. He has been unable to get it again, and as regrettable as it is to close the book without it, the printers have held their forms open weeks for this copy and now refuse to attach any longer faith to my broken promises to secure such paper.—SECRETARY.)

PAPERS READ.

Year.	Writer.	Subject.
1894	John Arthur.....	President's Address—"Lawyers in Their Relations With the State."
"	R. A. Ballinger.....	"Our Community Property Laws."
"	Frank H. Graves.....	"Non-Partisan Selection of the Judiciary."
"	Thomas Carroll.....	"Policy of Redemption Laws."
"	John W. Pratt.....	"Government of Cities."
"	Charles S. Fogg.....	"Evils of the Promiscuous Appointment of Receivers."
"	James B. Reavis.....	"Our Exemption Laws."
"	Frank T. Post.....	"The Material Man's Lien."
"	Orange Jacobs.....	"Reminiscences of the Bench and Bar of Washington."
1895	George M. Forster.....	President's Address.
"	George Turner.....	"Practice and Procedure in the State of Washington."
"	Charles O. Bates.....	"Juries and Jury Trials."
"	David E. Baily.....	"Stare Decisis."
"	C. H. Hanford.....	"Jurisdiction of American Courts, State and Federal."
"	John J. McGilvra.....	"The Pioneer Judges and Lawyers of Washington."
1896	Charles S. Fogg.....	President's Address—"The Law and Lawyer in History."
"	T. N. Allen.....	"Judicial Legislation."
"	N. T. Caton.....	"Pioneer Judges and Lawyers."
"	Emmett N. Parker.....	"Probate Law and Practice in Washington."
"	George Donworth.....	"Corporations."
"	R. S. Holt.....	"Contributory Negligence."
"	James Z. Moore.....	"Landlord and Tenant."

Year.	Writer.	Subject.
1896	Alfred Battle.....	"Record Notice and Curative Acts."
"	W. T. Dovell.....	"Bench and Bar."
1897	Harold Preston.....	President's Address.
"	E. B. Leaming.....	"Philosophy of the Law."
"	W. H. Pritchard.....	"The Policy and Practical Effect of Usury Laws."
"	Ben Sheeks.....	"Some Judicial Opinions—A Study."
1897	Austin Mires.....	"Irrigation and Water Rights in the State of Washington."
"	John P. Hoyt.....	"Reminiscences of the Bench and Bar of Washington."
1898	George Turner..	President's Address.
"	W. C. Sharpstein.....	"Annexation of Foreign Territory; Its Constitutionality and Expediency."
"	F. H. Brownell.....	"Mining Laws in Washington."
"	James Wickersham.....	"The Constitution of China—A Study in Primitive Law."
"	Henry M. Hoyt.....	"The Legal Effects of Mortgages and Pledges of Rents and Profits of Real Estate."
"	Frederick Bausman.....	"Public Policy as an Element of Judicial Construction."
1899	Theodore L. Stiles.....	President's Address — "Legislative Encroachments Upon Private Right."
"	James G. McClinton.....	"Reform in Criminal Procedure."
"	Byron Millett.....	"Fourteenth Amendment to the United States Constitution."
"	George H. Walker.....	"What Shall Be Done About the Trusts?"
"	E. F. Blaine.....	"Decennial of our State Constitution."
"	Samuel R. Stern.....	"The Law and the Laborer."
1900	George Donworth.....	President's Address—"The Passing of Precedent."
"	Will H. Thompson.....	"The Status of Our Newly-Acquired Territory."
"	Herbert S. Griggs.....	"Admiralty Practice."
"	Charles E. Shepard.....	"Limitations on Municipal Indebtedness."

Year.	Writer.	Subject.
1900.....	C. W. Hodgdon.....	"Government Ownership of Railroads."
"	J. B. Davidson.....	"Needed Reforms in the Laws of Marriage and Divorce."
"	Thomas B. Hardin.....	"How Should United States Senators Be Elected?"
1901.....	Samuel R. Stern.....	President's Address.
"	A. G. Kellam.....	"The Trust Fund Theory of Corporation Assets."
"	T. O. Abbott.....	"Advantages of the Torrens System of Conveyancing."
"	E. G. Kreider.....	"Law Reporting."
"	Joseph Shippen.....	"The Insular Questions and their Solution by the Supreme Court of the United States."
1902.....	Austin Mires.....	President's Address.
"	Edward Whitson.....	"The Course of Legislation in Washington."
"	Will G. Graves.....	"Stability of Legal Principles—A Thing of the Past."
"	Arthur Remington.....	"Railway and Transportation Commissions."
"	C. H. Hanford.....	"Conflicting Decisions of Federal and State Courts."
"	Orange Jacobs.....	"Reminiscences of Bench and Bar."
"	Edward Pruyn.....	Poem—"A Day in Court."
1903.....	R. G. Hudson.....	President's Address—"Trusts."
"	F. D. Nash.....	"Street Assessments."
"	N. T. Caton.....	"Some Pioneer Judges and Lawyers I Have Known."
"	L. Frank Brown.....	"The Use and Abuse of the Labor Union."
"	Thomas Burke.....	"The Life and Character of John B. Allen."
"	John T. Condon.....	"A Theory of Legal Obligation."
"	James B. Reavis.....	"Taxation of Franchises."
1904.....	W. G. Peters.....	President's Address.
"	Carrol B. Graves.....	"The Desirability of Harmonizing State and Federal Statutes on Irrigation."

- "E. C. Macdonald..... "Relief of Our State and Federal Courts."
- "Alfred Battle..... For Affirmative of, "Should the State Permit Corporations to Own and Vote Stock in Other Corporations?"
- "Theo. L. Stiles..... For Negative of, "Should the State Permit Corporations to Own and Vote Stock in Other Corporations?"
- 1905.....Edward Whitson..... President's Address.
- "S. M. Bruce..... "The Jury System."
- "Harvey L. Johnson..... "The Development of the Law of Labor and Labor Organizations."
- "Geo. Ladd Munn..... "The Community Property Law and Non-Residents."
- "C. C. Gose..... "Is the Provision of Our State Constitution Relative to Private Ways of Necessity in Conflict With the Fourteenth Amendment."

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NEW YORK COUNTY
LAWYERS' ASSOCIATION
PROCEEDINGS
NEW YORK COUNTY
LAWYERS ASSOCIATION
OF THE

Washington State Bar Association

EIGHTEENTH ANNUAL SESSION

Held in the City of Everett, July 12, 13 and 14, 1906.

PROCEEDINGS REPORTED BY
O. C. GASTON
OF THE EVERETT BAR

PRESS OF C. W. GORHAM, OLYMPIA



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of the
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Holt, R. S.....	Tacoma
Hovey, C. R.....	Ellensburg
Howe, James B.....	Seattle
Hoyt, John P.....	Seattle
Hoyt, Henry M.....	Nome, Alaska
Hoyt, Charles W.....	Spokane
Hubbard, H. Frank.....	Wenatchee
Hudson, R. G.....	Tacoma
Hughes, E. C.....	Seattle
Humphries, John E.....	Seattle
Huneke, William A.....	Spokane
Hurd, M. P.....	Mt. Vernon
Jacobs, Orange.....	Seattle
Jacobs, A. L.....	Seattle
Johnson, Harvey L.....	Tacoma
Joiner, Geo. A.....	Mt. Vernon
Jones, Richard S.....	Seattle
Kane, M. F.....	Seattle
Kauffman, Ralph.....	Ellensburg
Kellman, A. G.....	Spokane
Kennan, H. L.....	Spokane
Kennedy, J. Y.....	Everett
Kershaw, T. R.....	Bellingham
Kimbal, P. W.....	Pullman
Kipp, R. H.....	Colfax
Knapp, Lyman E.....	Seattle
Kuhn, Joseph.....	Port Townsend
Langford, F. E.....	Spokane

Lechey, Maurice.....	Seattle
Lehman, Robert B.....	Tacoma
Leise, Wilfred M.....	Everett
Leo, John.....	Tacoma
Levy, Aubrey	Seattle
Lewis, James Hamilton.....	Chicago, Ill.
Lock, D. W.....	Everett
Loomis, Henry B.....	Seattle
Lindsley, J. B.....	Spokane
Linn, O. V.....	Olympia
Lueders, Henry W.....	Tacoma
Lund, Charles P.....	Spokane
Lung, Henry W.....	Seattle
Mattison, Thomas	Tacoma
McClinton, James G.....	Port Angeles
McCrosky, R. L.....	Colfax
McLaren, W. G.....	Everett
McLean, Henry	Mt. Vernon
McGilvra, O. C.....	Seattle
Macdonald, Ernest C.....	Spokane
Mendenhall, Mark F.....	Spokane
Merritt, H. D.....	Spokane
Miller, C. E.....	South Bend
Miller, C. F.....	Dayton
Miller, Eugene	Spokane
Miller, Fred	Spokane
Millett, Byron.....	Olympia
Million, E. C.....	Mt. Vernon
Mires, Austin	Ellensburg
Moore, James Z.....	Spokane
Moore, William H.....	Seattle
Mount, Wallace	Olympia
Mulvihill, Robert	Everett

Munday, Charles F.....	Seattle
Munn, Geo. Ladd.....	Seattle
Munter, Adolph	Spokane
Murphy, J. B.....	Seattle
Murray, Charles A.....	Spokane
Myres, H. A. P.....	Davenport
Nash, Frank D.....	Tacoma
Neagle, John L.....	Seattle
Neal, C. H.....	Davenport
Nichols, J. W. A.....	Tacoma
Onstine, Burton J.....	Spokane
Padgett, B. E.....	Everett
Palmer, E. B.....	Seattle
Parker, Emmett N.....	Tacoma
Parsons, Galusha	Tacoma
Peacock, John A.....	Spokane
Pendarvis, C. R.....	Seattle
Peters, William A.....	Seattle
Peterson, Fred H.....	Seattle
Pickrell, J. N.....	Colfax
Pierce, Frank	Seattle
Piles, S. H.....	Seattle
Porter, Nathan S.....	Olympia
Post, Frank T.....	Spokane
Powell, J. H.....	Seattle
Prather, L. H.....	Spokane
Pratt, W. H.....	Tacoma
Preston, Harold.....	Seattle
Price, J. G.....	Seattle
Pruyn, Edward	Ellensburg
Quinn, Patrick F.....	Spokane
Ramsey, H. J.....	Seattle
Reavis, James B.....	Seattle

Reeves, Frank	Wenatchee
Reid, George T.....	Tacoma
Reinhart, C. S.....	Olympia
Remington, Arthur ..	Olympia
Reynolds, A. L.....	Walla Walla
Rice, A. E.....	Chehalis
Richardson, William E.....	Spokane
Ripley, G. G.....	Spokane
Robb, Bamford H.....	Seattle
Roberts, John W.....	Seattle
Robinson, J. W.....	Olympia
Rockwell, T. D.....	Spokane
Ronald, J. T.....	Seattle
Root, Milo A.....	Seattle
Ross, E. W.....	Olympia
Rudkin, Frank H.....	North Yakima
Rummens, G. H.....	Asotin
Saunders, Wirt W.....	Spokane
Sauter, O. E.....	Seattle
Scott, W. D.....	Spokane
Shackleford, John A.....	Tacoma
Shackleford, Thos. W.....	Seattle
Shaffer, C. Will.....	Olympia
Shank, Corwin S.....	Seattle
Sharpstein, John L.....	Walla Walla
Sheeks, Ben	Aberdeen
Sheller, Wm.....	Everett
Shepard, Chas. E.....	Seattle
Shepard, Thomas R.....	Seattle
Shine, P. C.....	Spokane
Shippen, Joseph	Seattle
Shorett, J. W.....	Everett
Slausen, Howard B.....	Seattle

Slemmons, A. L.....	Ellensburg
Smith, Del Carey.....	Spokane
Smith, Sol	South Bend
Smith, Winfield R.....	Seattle
Snell, Bertha M.....	Tacoma
Snell, Marshall K.....	Tacoma
Snell, W. H.....	Tacoma
Southard, Frank S.....	Seattle
Spirk, Chas. A.....	Seattle
Squire, Watson C.....	Seattle
Staser, C.....	Ritzville
Stedman, Livingston B.....	Seattle
Steiner, G. E.....	Seattle
Stern, Samuel R.....	Spokane
Stewart, James	Port Angeles
Stiles, T. L.....	Tacoma
Stoll, W. T.....	Spokane
Stratton, W. B.....	Seattle
Tallman, Boyd J.....	Seattle
Tanner, W. V.....	Seattle
Taylor, E. Win.....	Tacoma
Teats, Govnor	Tacoma
Thayer, W. J.....	Spokane
Thompson, Will H.....	Seattle
Tolman, Warren W.....	Spokane
Town, Ira A.....	Tacoma
Townsend, W. F.....	Spokane
Trefethen, D. B.....	Seattle
Troy, P. M.....	Olympia
Tucker, O. A.....	Seattle
Turner, L. T.....	Seattle
Turner, George.....	Spokane
Vance, T. M.....	Olympia

Voorhees, C. S.	Spokane
Voorhees, Reese H.	Spokane
Wakefield, W. J. C.	Spokane
Walker, George H.	Seattle
Wall, J. P.	Ballard
Warburton, S.	Tacoma
Warren, W. T.	Davenport
Watrous, Martin	Seattle
Waugh, J. C.	Mt. Vernon
Weir, Allen	Olympia
Wells, S. A.	Spokane
Welsh, J. T.	South Bend
Welsh, W. J.	Roslyn
Welty, H. J.	Pullman
Wheeler, L. H.	Seattle
Whitson, Edward	North Yakima
Wickersham, James	Fairbanks, Alaska
Wiley, Charles L.	Seattle
Wilhelm, Honor L.	Seattle
Williams, James A.	Spokane
Williams, Louis	Seattle
Williams, W. M.	Seattle
Wilshire, W. W.	Seattle
Winders, C. H.	Seattle
Winfree, W. H.	Spokane
Wooten, Dudley G.	Seattle
Wright, Geo. E.	Seattle
Wynn, W. H.	Friday Harbor
Zent, W. W.	Ritzville

PROCEEDINGS.

The eighteenth annual convention of the Association was called to order by the President, at the city of Everett, in the forenoon of July 12, 1906, as follows:

THE PRESIDENT—The convention will come to order. The first thing on the program is the report of the Secretary.

REPORT OF SECRETARY.

Olympia, Washington, July 1, 1906.

To the President and Members of the Washington State Bar Association:

I have the honor to report as follows:

Number of members as per last report.....	256
Number joined since.....	15
	— 271
Number dropped for non-payment of dues.....	16
Number died.....	4
Removed from state	4
	— 24
Total membership	247
Cash receipts from admission fees.....	\$ 60.00
Cash received from dues.....	404.00
	—
Paid to Treasurer	\$464.00

C. WILL SHAFFER, Secretary.

THE PRESIDENT—Gentlemen, you have heard the report of the Secretary. Are there any remarks upon it? There being no objection, it will stand approved as read. Next on the program is the report of the Treasurer.

THE SECRETARY—The Treasurer regrets his inability to be here to submit his report himself. He thinks, however, he will

probably be here before the close of the session. His report is as follows:

REPORT OF TREASURER.

Olympia, Washington, July 1, 1906.

To the Washington State Bar Association:

Gentlemen—I have the honor to present this, my annual report as Treasurer of this Association for the fiscal year ending July 1, 1906:

1906.	
July 1, To balance as per last report.....	\$ 17.85
April 20, To received from Secretary.....	29.00
July 1, To received from Secretary.....	435.00
	<hr/> \$481.85
1906	
March 10, By paid warrant No. 32.....	404.75
	<hr/>
July 1, To balance, cash on hand.....	77.10

Respectfully submitted,

N. S. PORTER, Treasurer.

THE PRESIDENT—Gentlemen, you have heard the report of the Treasurer. Are there any remarks? If not, the report of the Treasurer will stand approved as read. Next on the program is the address of the President.

Upon motion of Judge Whitson the Association adjourned until three o'clock to accommodate those who would arrive on delayed trains.

THE PRESIDENT—The convention will then stand adjourned until three o'clock this afternoon at this place. I would like all visiting members to give their names to the Secretary in order that we may issue them cards to our little local club here. At that club tonight the visiting brothers will be accorded a reception at the hands of the local members. We will stand adjourned until three o'clock.

AFTERNOON SESSION.

July 12, 1906.

THE PRESIDENT—The meeting will please come to order.

MR. GORDON—I have a resolution which I desire to have read and referred to the Legislative Committee.

The Secretary reads:

WHEREAS, by section 14, article 4, of the constitution of the state of Washington, the salary of each of the judges of the supreme court is fixed at \$4,000 per annum and that of each of the judges of the superior court at \$3,000 per annum; and it is provided that said salaries may be increased by the legislature, and

WHEREAS, in the judgment of this Association the salary of each of the judges of the supreme court should be increased to \$6,000 per annum, and that of each of the judges of the superior court in and for the counties of King, Pierce and Spokane, should be increased to \$5,000 per annum; be it, therefore,

RESOLVED, that a committee of this Association, of which the President shall be chairman, and two other members to be appointed by him (such appointments to be made not later than October 1st, 1906) be designated, empowered and directed to present these resolutions to the Senate and House of Representatives at the next legislative session, and to take such action as in the judgment of said committee will best promote the accomplishment of the objects herein expressed.

MR. GORDON—For the purpose of getting this report in some form by some appropriate committee to the end that it may be discussed, I move that the resolution just read be referred to the Legislative Committee.

Motion seconded by Mr. Jones.

THE PRESIDENT—Moved and seconded that the resolution just introduced and read be referred to the Legislative Com-

mittee for later discussion and report. Are there any remarks?

THE SECRETARY—I would like to ask, is that committee to report at this session?

THE PRESIDENT—Yes, sir, tomorrow.

THE SECRETARY—I would state that the Judiciary Committee has something of that kind on hand.

MR. GORDON—I understand that both committees have had some discussion of the matter. It occurred to me that the Committee on Legislation was the appropriate committee. However, both of those committees report tomorrow and that is a matter that I suppose can be acted upon harmoniously.

THE PRESIDENT—It is moved and seconded that the resolution be referred to the Legislative Committee to be reported upon tomorrow. Is there any further discussion?

MR. SHANK—Mr. Chairman, I just want to state that the Committee on Judiciary, of which I am a member, has practically nothing else to report upon, so that, if this is referred to the Legislative Committee—which is entirely agreeable to me—yet the report which I am going to hand to the Secretary would not necessarily be taken up. I, personally, do not agree with the resolution. In the first place, have I the privilege of speaking to the resolution upon the merits of the resolution?

THE PRESIDENT—I suppose discussion is in order.

MR. SHANK—I speak now because I probably will not be present tomorrow. I think the salaries of the supreme judges should be at least seven thousand instead of six. I think a division of the state, with reference to the amount paid superior judges, ought to be along a little different line. The report which the Judiciary Committee was to make had in mind suggesting that, in view of the fact that Everett has now reached the point where it will practically be a first-class

city, that if a recommendation was made whereby the superior judges in counties having cities of the first class be the division, it would be a more equitable division. That would include Whatcom and Snohomish counties, and the three counties mentioned by Judge Gordon. I should prefer that there should be added, at least, such wording as would include Snohomish and Whatcom counties because these two counties are doing a great deal of work. I venture the statement, without offense to any of my brethren from Pierce county, that the judges in those two counties, where they have only one judge, probably are doing more work than any one of the judges in Pierce county, but this subdivision would include Pierce county and omit these other two counties which should be included in the increase in salaries. I make this only by way of suggestion. I do not know that it would be proper to make a motion to the resolution, but I make this by way of suggestion so that, if I am not here tomorrow, I would like any of the members of the Association who agree with me to see that that is taken into consideration, and any report that may come in might be viewed from that standpoint, because I believe, when you come to look into the amount of work done by our supreme court, that seven thousand dollars is less than the salaries paid judges of other courts in this country who are doing very much less work than our own supreme court. Five thousand dollars is certainly a very moderate salary to be paid in these counties where we must draw our judges from those members of the bar who are able to earn more than five thousand dollars. It probably is not true in the smaller counties. I want to make this by way of suggestion and by way of supplementing what may come up tomorrow.

MR. GORDON—Mr. President, I am in entire accord with what is said by Brother Shank, but I think the proper way to get this before the Association for discussion is through the

committee's report. I am not adverse to having the resolution modified or changed to meet the views of the committee. Then, of course, the whole matter will come before the Association for discussion. I therefore did not ask the adoption of the resolution at this time, knowing that this committee would be required to report tomorrow, and think it only fair, and probably would bring out a better discussion to have it introduced now and referred to the end that we may know when the matter will come before the Association. I therefore do not propose to go into the discussion of the merits. It does not seem to me that now is the appropriate time. My object is to get the subject-matter in such shape that it can be brought in at an opportune time and thereby afford opportunity for ample discussion.

MR. JONES—Agreeing as I do with Brother Shank in this matter, I offer as an amendment that this resolution be referred to the Committees on Judiciary and Legislation, to report tomorrow.

MR. GORDON—I accept the amendment.

The motion as amended passed.

THE PRESIDENT—Are there any other resolutions at this time? If not, the next order of business will be the President's address. Will Vice President Hughes take the chair?

First Vice President Hughes assumed the chair.

VICE PRESIDENT HUGHES—Gentlemen, I am pleased to introduce to you our President.

The President then delivered his address. (See Appendix.)

VICE PRESIDENT HUGHES—Gentlemen, you have listened to the very able and interesting address of our President, which has been fruitful of suggestion and of somewhat progressive ideas. He rightly, I think, anticipated that there might be some discussion and some divergence of opinion and his modesty

forbade that he should sit while you discussed it. The Chair will hear any discussion upon this subject.

MR. JONES—It is suggested, and I believe true, that I ought to make a suggestion here. I may be wrong and the gentleman right, yet while I do not desire to detract, in the least, from the honors of Everett, it seems to me that we had a meeting of the State Bar Association at Ellensburg. I may be wrong and the President right.

VICE PRESIDENT HUGHES—The President's mind and his progressive ideas have traveled so rapidly that he has jumped over Ellensburg.

MR. ROCKWELL—There is another matter in that address that does not appeal strongly to me, in which the President named the three largest cities of the state, naming them in the order of Tacoma, Seattle and Spokane. I desire to object to Spokane being named last.

VICE PRESIDENT HUGHES—Are there any further criticisms? Do the members of the Association have any further comments to make suggested by this paper? If not, I will ask the President to take the chair.

The President resumed the chair.

THE PRESIDENT—The Secretary suggests that perhaps a recess of five minutes would be advisable. Unless there is objection, we will take a recess of five minutes.

(Recess had and concluded.)

THE PRESIDENT—Next on the program is the report of the Committee on Commercial Law. Is that committee ready to report?

MR. HORAN—Mr. President, the Committee on Commercial Law has had one meeting. None of the members of that committee has any particular ideas in connection with the subject. One suggestion was made with reference to some changes in

the law of negotiable instruments, but after canvassing the proposition somewhat we came to the conclusion that, inasmuch as the states, generally, had adopted this negotiable instrument law, we thought it best not to tamper with it at present, so that is practically all the report the committee has on that point.

MR. JONES—Mr. President, I move that the member of the committee who reported be placed on file. (Laughter.)

THE PRESIDENT—We will depart somewhat from the order published on the program now, owing to the fact that Judge Rudkin will not be able to be with us tomorrow, and the next paper, therefore, will be his paper "The Court's Work," by Honorable F. H. Rudkin, of the supreme court. (See Appendix.)

THE PRESIDENT—The Committee on Order of Business felt themselves very fortunate indeed when they induced Judge Rudkin to consent to come before us and read a paper. We now feel that, as a committee, we are indeed entitled to the congratulations of the Association in having been able to present to you so able and interesting a paper. Is there any discussion; any suggestion to the supreme court that any member of the bar wants to make?

JUDGE ROOT—Mr. President, I would like to concur.

MR. JONES—Have you read the record?

THE PRESIDENT—Next on the program is the report of the Committee on the Torrens system.

MR. ABBOTT—Mr. Chairman, I do not know that there is any Committee on the Torrens system, but I have been informed by the Secretary of this Association that there is and that I am chairman of that committee. I remember, at the last meeting of this Association, we endeavored to have the committee dispensed with and discharged, but the Association did not see fit to do that. However, I have consulted some with

the other members of the committee, as it was organized, and I have really nothing to report except to report progress. I have been informed that the State Bankers' Association has recently approved the Torrens system, and has appointed a committee for the purpose of securing its adoption by the legislature of this state. To that extent I think we might hope that a sentiment might be created which would bring about the adoption of this statute. I, for one, believe that it would be a great reform and one which would bring a great deal of good to the people of the state, not merely in name, but, as every man who has anything to do with the handling of real estate knows, it is a very expensive thing to transfer your property under the present system, and sometimes a very dangerous thing. If we could adopt a system that would enable us to handle our real property much as we would handle our bank stock, it would certainly be an improvement on the present system. However, I do not intend to argue the merits of the Torrens system before this Association today. That has been before the Association for some time, and I am satisfied every man has his mind made up as to what is desirable. I think, however, it is desirable to see whether or not the sentiment, which now seems to be growing somewhat, cannot be made sufficiently strong to induce the legislature to enact a law. Every time we have approached the members of the legislature with a view to getting them to listen to us, even for the purpose of presenting a bill, they have always replied that there was no sentiment in favor of it and that they could not afford to take up their time with considering a matter of so much moment and a bill of such large extent as this bill would be without there was some sentiment among the people of the state demanding it. Now, I hope that this meeting will take some action with reference to extending and creating that sentiment throughout the state. Some suggestion has been made in our committee of a plan

which may lead to that end and I will offer the suggestion and will make a motion which will bring out some argument of the proposition and see whether it is proper, and that is this:

That a committee of at least two members of the bar in this Association, in each county of this state, be appointed as a special committee on the Torrens system, with a view to promoting sentiment favorable to its adoption, and, particularly, with reference to the members of the legislature that may be chosen from the districts.

I do not know how large a committee that would make but, inasmuch as they would not have to act together but would act independently, I do not think that the size would be a very material matter except the more we get to work for the bill will have a tendency to extend the sentiment just that much farther, and I therefore make a motion to that effect without repeating it. The Secretary can formulate the motion as the members understand it.

The motion was seconded.

THE PRESIDENT—You have heard the motion, gentlemen, which is to the effect that a committee of two from each county in the state be appointed to further the interests of the adoption of some law by the legislature in the nature of the Torrens system and create or promote throughout the state at large a demand for some such improvement in our legislative system in the transfer of real estate title. In this motion of yours, Mr. Abbott, no committee was suggested to be appointed. I think it would be better for you to suggest the names, being acquainted with those who have taken interest in the matter in each of the different counties of the state.

MR. ABBOTT—I will willingly offer such suggestions as I can.

There being no further remarks the motion was put and adopted.

THE PRESIDENT—Is the Committee on Juvenile Courts ready to report?

JUDGE FRATER—Mr. President, about thirty days ago I received a notice from the Secretary of this Association informing me that I was chairman of the Committee on Juvenile Courts and expected to report at this session, and at that time I had a jury trying a murder case and since that time I have been continuously, until day before yesterday, engaged every day, and in one case fourteen days consecutively, and, not having any time, I informed the Secretary that it would be impossible to make any report, and that is where I find myself today. I have not had time or chance to communicate with the other members of the committee. If I had been aware of the fact that I was on this committee—I probably should have been but I did not look over the list of committees in the last report—a copy of which I have—if I had been aware of the fact sooner, I might perhaps have had ready and made a report. If I had, I should probably have communicated with the judges where the juvenile court has been put into effect. I believe Judge Kennan, of Spokane county, is acting as juvenile judge. I do not know whether anything has been done in Pierce county or not. Sometime after the law went into effect, a year ago or more, I was informed that they had not done anything over there, and, as I say, I am not advised whether they have done anything yet or not.

The law, I think, is inadequate. Now, a few observations generally along the line, but, generally speaking, having had charge of the work of the juvenile court in King county during the past year, I can say this, that, while the results have not been what I would like them to have been, and they have not been what they might have been, if it had been possible or had I given it the time that I personally should have had to give it. I have not had the time to give it that the importance

of the work required, but, notwithstanding that fact, I am still satisfied that it is a good law and the results, so far as I have been able to put it into effect, have been satisfactory.

The law, I said, is inadequate. There is further legislation needed, and along that line I will probably make some recommendations to Governor Mead, who has called upon me to offer him some suggestions that he may embody them in his message to the legislature. One of those things is the passage of an adult delinquency law. I find, in the management of these cases—and this raises the conclusion that the law is inadequate—that the causes which bring about the delinquency of the child—many children—are due to their environment, due to the lack of parents, guardians and others who have their control and who, while they should, apparently do not have the welfare of these minor delinquents at heart, and one of the things that is very much needed is an adult delinquency law, so that the responsibility for the delinquency of the child could be placed upon and charged to the proper parties, and that they might be held responsible and that the court might be able to deal with those who contribute to the delinquency of the child. There are many other suggestions, gentlemen. I am not prepared at this time and it would be useless to go on further in that line. However, I will say, gentlemen, that I believe in the juvenile court law. I believe it should be continued, it should be elaborated, and it should be amended, and further legislation along the same line should be enacted at the next legislature, and I trust and hope and it shall be my purpose, so far as possible, to bring it properly to the attention of the next legislature.

JUDGE ROOT—Mr. President, I think that this subject is a very important one and I think that it is one to which the attorneys and the judges of this state might well give careful attention. Judge Frater is entitled to great credit for the man-

ner in which he has handled this work in the city of Seattle, although, like all the superior court judges in that city, he is overwhelmed with other work. He has devoted very much time to it, and it has been a great success there, and I wish, Mr. President, to make this suggestion: I believe it would be well if we might have a written report from Judge Frater of his experiences in the administration of that law, together with such suggestions as occur to him in the matter of legislation and amendments to legislation which we now have, and I therefore move, Mr. President,

That Judge Frater be invited to prepare a report or a paper outlining his experiences and such recommendations as he thinks well to be made to the legislature, in order that the report may come in and be published with our proceedings so that it may be scattered over the state where the attorneys may read and give it thought. I think the law, as administered in King county, a great success, for which great credit is due Judge Frater, and I think, if it were taken up in other counties with the interest which Judge Frater manifests in the subject-matter, that it would be a success in all the other counties. This thing of looking after the boys at the right time and in the right manner is a matter that ought to be of importance to all of us, a matter well worthy of our attention.

The motion received a second.

THE PRESIDENT—It is moved and seconded that Judge Frater be requested to embody his thoughts on this subject of juvenile courts in a written report to be published, as I understand it, in the minutes of this Association, for dissemination among the members of the bar. Are there any remarks?

MR. MUNTER—Our county, the county of Spokane, is one of the counties in which the law has been put into practical effect, and I have had occasion to observe its effects, with the result that I fully concur with what has been said here about

the beneficial effects of enforcement where the law is enforced, and there can be, and are, I believe, no two opinions in the minds of the members of this bar as to the beneficial worth of the law itself. There is but one suggestion that I would like to make in connection with it, to be used as Judge Frater may seem proper in the report which we will expect him to make under this motion. It is a suggestion which I believe can be carried out to advantage, and which I consider is defeated by the law as it exists. One of the objects of the juvenile law is to prevent that brand of infamy or irrespectability which is placed usually upon a criminal from being placed upon children of an age of insufficient discretion, and, therefore, these courts are not supposed to be held publicly. Nevertheless, our newspapers publish everything, the name of every child who is arrested under that law, what is done with them, and treat them just as they do any other criminal case. Now that, in effect, destroys the entire purpose and object of the law. It makes it public among schoolmates, by whom it is continually brought up to his embarrassment and provocation. One case I remember now of a boy who, with other young fellows, was caught in a car filled with watermelons, and one whipped out some kind of an instrument or other and was cutting out a piece of watermelon. He was arrested for it. It was all right to arrest him, but there the newspapers come in and they get after it and give it publicity, and the boy finds it impossible to get out of that kind of a scrape because it is thrown up to him. Now, I would suggest—and I do not believe we would be confronted in that case with the difficulty of curbing the press, or an unconstitutional provision curbing the freedom of the press, and, if that can be prohibited by law, that it should be done, the publication of the names of these young culprits.

MR. FAUSSETT—Mr. President, having taught school for a number of years, I am greatly interested in our boys. While

in California this last year I took some pains to look into the workings of the juvenile court down there. Since coming back I have investigated the enforcement of the juvenile law in Seattle, and elsewhere in this state. I also wrote to Salt Lake, and got the laws that are in force in Utah, and also from Judge Brown, of Colorado, secured a copy of the report which included the laws they have in the state there. Now, it seems to me, from the knowledge which I gained while down in California and what I have gained by reading the reports—I confess I have not had much time to give to it—but I am certain that there is one thing that is sorely needed in this state and in which the law that we have is defective, and that is proper means of taking care of those children, and I would suggest at this time that Judge Frater, of whose work I have heard so much here, and during the last year, would give us some suggestions along that line. As I look at our law in this state and read the laws of Colorado, Utah and California, it seems to me that it is woefully defective in the means of taking care of our juveniles after they are gotten into court.

MR. HUGHES—I would like to ask that the resolution offered by Judge Root be read.

THE PRESIDENT—The stenographer will please read the resolution.

(Resolution read.)

MR. HUGHES—I move an amendment to this resolution by inserting, at the beginning of it, that the views expressed by Judge Frater be approved, and then the motion.

JUDGE ROOT—I accept the amendment.

MR. HUGHES—And also that he recommend that they enact it so that it be not a crime to cut a watermelon.

THE PRESIDENT—The amended resolution as adopted reads:

“That the views expressed by Judge Frater be approved and

that Judge Frater be invited to prepare a report or a paper outlining his experiences and such recommendations as he thinks it will be well to be made to the legislature, in order that the report may come in and be published with our proceedings.

The resolution was adopted. (For the report of Judge Frater, see Appendix.)

THE PRESIDENT—I was requested to ask all the prosecuting attorneys who are present, and who are about to hold a little convention or meeting of their own, to meet here immediately after the adjournment of this session. We come now to the paper by Mr. George E. Wright, "Some Questions of Real Estate Law." (See Appendix.)

THE PRESIDENT—Is there any discussion of this very able and interesting paper?

MR. DORMITZER—Mr. President and gentlemen: I do not contemplate enlarging upon the address or criticizing it, or propounding new questions of law, but after listening to our Honorable President's opening address, listening to what he had to say in regard to the decisions of the supreme court, and then listening to Mr. Wright's address, a rather novel situation presents itself to me, which just occurred to my mind. The question suggested by Mr. Wright is, indeed, and always has been, a very important one; that is, designating, in the executing of a deed of conveyance, the names of the grantees, that is, the wife of the husband, as in the suggestion made. Now, placing the two propositions together, a rather novel situation presents itself under the decision of our United States supreme court wherein it was ruled that a man may have a valid wife in one state, and she may not be his valid wife in another state. Hence, for instance, as the proposition was suggested, assuming for the purpose of argument, that he has thirty-eight wives in different states; they may be all valid in the respective

states in which they are resident and yet not the legal wife in this particular state under the community law. They may all have offspring from this same husband. Hence, when he dies, the proposition would be as to their rights. They certainly cannot be considered as illegitimate. They must certainly all come in. Under the rule of the supreme court they must have some right, and these children all come in. Suppose an affidavit was attached to all conveyances wherein the man swear that he is married, that so-and-so is his only wife, then he is guilty of perjury because he has other wives and other children in other states, and his offspring, although the wife may not be a legal wife in this state, still it could not be contended for a moment that the offspring are bastards. They are legitimate. They have been born in lawful wedlock and they must come in here and defend their rights. Hence, I suggest that it is a sort of novel and complicated proposition, it seems to me, that, under the ruling of the supreme court of the United States and under the condition of the community law in this state, and, it must be confessed, that any offspring, take for instance the Sullivan estate, any husband can come in here and claim they are community holders, and the deceased may be guilty of perjury positively and the offspring in the other states cannot be deprived of their community interest. I would like to see what the solution of that proposition would be.

MR. CONDON—I want to call attention to a state of facts that arose in my practice once that illustrates the importance of Mr. Wright's first point. The question arose like this: Upon the birth of a child, its mother died. Shortly after the mother's death the father remarried,—within a few months. Subsequently—there having been no administration of the wife's estate—the opportunity came to convey, and he went to an at-

torney to draw up the deed and made his request known. He said, "Certainly; will your wife sign?" "Certainly," and he went and got his wife to sign—his second wife. If the deed had been executed to this grantor in the manner Mr. Wright suggests, the difference in the names of those two wives would have presented this question at once. However, this question did not arise until the child, a boy, came to be twenty years old. When the child was twenty years of age he brought suit, through his guardian, for partition, and there was really no excuse to make. If we would all adopt the method of inserting in the deed whether the person is married or not at the time the title is taken we would avoid all such difficulty as this.

MR. ABBOTT—Mr. President, Mr. Wright has suggested that he would advise us never to take a deed executed by an executor under a non-intervention will unless there is some special provision in the will authorizing it to be made. Now, I would like to know, from a man of Mr. Wright's standing—I think it was a very important statement—I would like his further statement as to what we would do under such circumstances. Courts have held that a non-intervention will authorizes an executor to act absolutely without the intervention of the court and that the court cannot instruct or advise or act in any manner whatsoever with reference to the administration of the estate. How are we to have secure title to property coming from an executor under such a will or of such an estate? I would offer this as a suggestion, not as my opinion, but if the intent of the testator is to be the guide as to what the executor should do, is it not always the intent of the testator who makes a non-intervention will that his property shall be managed absolutely by the executor as if he himself were living and is it necessary, under those conditions and considering that intent as broadly, as that, for a specific provision to be inserted in the will author-

izing sales by him? I make those suggestions merely. I hope that some discussion can be brought out on it.

JUDGE BLACK—Mr. President, real estate conveyancing always appeals to me, and I think these discussions illustrate, probably, the fact that there is no system of conveyancing that can be formulated that will eliminate the use of a good deal of brain and discretion in the person who buys property. Take these suggestions as to having after the name of the grantee the word "bachelor," or "spinster," as the case may be; the mere putting of that in is no proof at all, and ought to be no proof at all in the mind of a reasonable man, that that is the fact, because a man who would attempt to defraud and cheat—and those are the men the lawyers have to look after—would usually say he is a bachelor; but just the same nearly every lawyer I know of in my practice will pass a deed where the deed says "bachelor," and will not pass it if it is not there, even though they know the party is a bachelor. The mere fact of the insertion of these things in a deed does not make it any more positive or binding than if they were not there. And you might go down the list and it would still come back to this question as to whether the statements contained in the document were true and, if they were not the truth, they would not bind, so that a great deal depends, after all, upon the investigations of attorneys and those who have to do with conveyancing, and the statements in deeds, although so commonly relied upon, are never sufficient. It is a well-known fact in this new country that a large number of men have come here and have written "bachelor" after their names who were not bachelors. The suggestions of my brother Wright are very good, but, with reference to that one suggestion that a man should designate his wife's name, suppose a man should have a wife whose name was Mary and afterwards he married another woman with the same name, it would not be of any help to the

man who bought the property; it might not be, but, after all, it comes down to individual investigation, and the lawyer who passes a title merely upon the recitations in a deed is doing, I think, a very unsafe thing. It needs a little more investigation than merely noting the recitations in the deed because they are of no legal force.

MR. BELL—It seems to me that a recitation in a deed is binding because of the fact that the notary public says he knows the person described in the deed and who makes the acknowledgement, and the officer is liable if a mistake is made, as much in the character as in the name. He says that he knows the man and he knows that he signed it and acknowledged it. But it seems that, in this discussion, everybody has overlooked the law which provides that if the opposite spouse does not give notice of record, within ninety days after the deed is filed of record, that he or she claims an interest in the property, that then it can be deeded by the person who has the property in his or her name, as the case may be, and give a good title. Now, our supreme court has passed on that very law and has held that if the transaction is in good faith it is binding, even though the husband has a wife or the wife a husband, that the title is still good. Now, if you put "unmarried man," "bachelor," or "single man," in the deed it is there and the notary public says that he knows the person and knows that he is single, or unmarried, or a bachelor or spinster, as the case may be, and he is certainly acting in good faith, and it is a good deed and it has no effect to put the name of the wife in the deed if it goes to the husband or the name of the husband if it goes to the wife. We have a way to protect ourselves, and the only question that might arise would be where the wife might die within the ninety days after the making of the deed and before giving notice, or the husband in case the wife deeded, and that would scarcely ever occur.

MR. PARKER—This last suggestion calls to my mind a little different understanding that I have of the force of the statute, which was an attempt to give us a safe basis upon which to rely upon the giving of a deed by the record owner ignoring the wife, or ignoring the husband, if the wife was the record owner. As I remember it, the court pretty nearly took the life out of the statute. When I first read the statute I felt that now we were going to be safe and all we had to do was to have the name signed in the same letters and words as the grantor received it, but I think the decisions do not go nearly so far as my brother suggests, and we still must be put upon our inquiry. As was suggested by Judge Black, it is absolutely impossible, in the very nature of human affairs, to have a hard-and-fast rule and to fix these things so that you can look at your record title and there stop and say, once for all, it is good or it is bad. Why, Mr. President, you would take your chances as to whether every single instrument in the chain of title is a forgery, and, of course, you ought to know it if it were. You would take your chances on a thousand other things that we might mention, because human ingenuity has not yet devised a system of records so perfect that it will contain everything that affects the title. It contains nothing as to the merits absolutely.

I have in mind two things that it seems to me would be a great help. I do not want to attack the community property law. I love it and regard it just as highly as the old-time lawyer regarded the widow's dower right, but I would, in some way, amend the statute which has been mentioned here relative to taking notice of the owner, record owner, and the presumption which was attempted to be created by that statute that the record owner was the whole owner—I would amend that in some way so as to make it absolutely certain that the record owner, when he signed the deed, conveyed the whole title. Now, I am afraid it may be suggested that that would be going a little

too far against the wife's rights, but I think that the necessities that exist here in this state, real estate being so much a commodity of common barter and trade, almost as much as personal property, I see no more reason why the husband should not have the absolute disposition of the real property, especially if the legal title stands in his own name, as if he were going to dispose of personal property of equal value. If that is not too much of an invasion upon the wife's rights, why, I am personally convinced that it would be a wise move.

I have in mind another thing that is small and it may never have been thought of before. The recital in a deed as to whether or not the grantor is married or single, bachelor or spinster, of course, is only an *ex parte* statement, and, in a certain sense, it does amount to nothing; it binds nobody. It may strengthen the purchaser of rights in good faith a little bit, but probably not very much, yet it is a help and it goes a little ways towards satisfying our minds as to the question which is, necessarily, outside the record. It is a common practice, I know, at least in the larger counties and probably it is in the smaller ones—I know it is in Seattle and Tacoma, and undoubtedly in others—that when we want to have some fact established regarding which we are uncertain as to whether a man was married or single at a certain time, or whether certain people were the only heirs of John Smith, who died some time ago, without the necessity of probate which, by reason of lapse of time is sometimes impracticable, we get an affidavit of somebody who is familiar with the fact. Of course, there is no warrant in law for the making of such an affidavit, and it simply has some moral force and we would regard that as something. Now, I would make that affidavit of a little more force; that is, I would give it the sanction of law so that a prosecution for perjury could be based upon it. Suppose a little statute were passed that an affidavit made by some one relative to some fact of that kind

should be competent and permissible of record and providing that if falsely made the person making it should be liable to punishment for perjury, still it would give that a little more weight, while it would be *ex parte* and would not bind anybody. I appreciate that fact. All these things are not improvements that are going to lead to a perfect end. They are merely going to help satisfy us on the thousand and one facts which, of necessity, must be outside the record. I examined a title some little time ago which had in it a probate proceeding of a deceased former owner, and also another of his wife, and some more proceedings, including a foreclosure, etc., and when I got through with it, having followed nothing but the record at all, to my mind, as surely as the sun shone, that man had three wives and two of them, anyway, did not seem to have parted with their title and I worried over it for weeks and finally, through Brother Hunt, down here at Seattle, it being the remnants of a large eastern estate, the difficulty that caused us all the trouble and got us mixed up was solved, and I found that actually he had but one wife, but she signed different names at different places in independent proceedings, so that is a sample of how things go. It was suggested that he had these wives when, as a matter of fact, he had not. They were facts coming up which seemed to impair the title, when as a matter of fact, they did not. As I say, that is only an instance of the thousand and one things we have just got to take notice of and satisfy ourselves concerning which are outside of the record, and these little things we would suggest are only helps and they are a long ways from being a solution of the question.

MR. JONES—Mr. President, there is no way you can cure all these troubles, but all these suggestions are good, and my brother, Judge Mires, sitting beside me, has made a suggestion which he is too modest to state to the bar and, I, not being modest, he has left it for me to state, and that is that the railroad com-

panies have adopted a system which would be much more perfect than any system that has been devised, and that is that we print along the side of the deed a line of blanks, "Name, married, unmarried, black or white, color of eyes, color of hair, shape of nose, etc.," and that the notary public be compelled to punch the deed. (Laughter.)

MR. HUGHES—Mr. Chairmman, there is only one thought, in connection with this discussion, that occurs to me that might be said and serve some useful purpose to prevent error in assuming the responsibility of determining the status of a title, and that is this, in connection with the suggestion made by Judge Parker. If, where the record disclosed some hiatus, some gap which it becomes necessary to supply by extraneous proof, and which we attempted to supply for the purpose of satisfying ourselves in passing upon the title, the law permitted us to use an affidavit to show, for example, that certain persons were all the heirs of a deceased person, or that some particular woman was the wife of the grantor at a certain time, or that he was actually unmarried at that time, and make the giving of a false affidavit perjury, providing that the affidavit itself be entitled by law to record and be given the force of proof, just the same as a certified deed in a chain of title, it would greatly simplify our labors and overcome the difficulties that confront the examiner of title in an attempt to validate an uncertain title.

MR. HUESTON—My friend Mr. Wright must have known that I did not know anything about that question that he referred to, or I would not have asked him for a free opinion on the subject. It is all a mystery to me, and I hoped that it might be cleared up, and I am unable at this time to throw any light on the question. I also wish to join my friend, Judge Parker, in showing astonishment that the person whom he looked up had but one wife until he found out that he was an Easterner. Also,

I find difficulty in the points made here for the betterment of the present system of conveyancing. A short time ago I bought some property of a citizen of our town, who was a young lady. I drew the deed myself, because I wanted to be pretty sure that I was getting it right. The next day she came back with a deed prepared by some other lawyer, and I looked around a little bit to see what the matter was and inquired the reason and she said: "Well, I am no old maid; I don't want to be called a spinster," and so, rather than sign the deed that I had carefully prepared, using the word "spinster," she had procured another lawyer to make a deed in which she was described as "single." (Laughter.) The very latest experience I had was last week. I was going to say I thought this idea of saying who the husband or wife of the grantee is was a good one, and I do think that, and so, pursuant to that idea, I drew a deed last week in which I stated the name of the grantee, who happened to be a married woman. I also stated "wife of so-and-so" who was her husband. The husband came back and he said that was all very well, but he was doing that—he didn't use this language, you know—he was doing it under cover, and, because he didn't want it known that he was interested in the real estate and therefore he put it in his wife's name. I want to make this suggestion simply to raise the question whether the Torrens system of land registration would not remove that difficulty.

MR. PARKER—I am one that opposed the Torrens system two years ago, but it is all laid aside now, by this paper.

MR. ABBOTT—I was going to ask this question, on my hobby; "If these questions raised here today were not the best arguments for the Torrens system?" It has been suggested there is no human way around the difficulties. I honestly believe the way around them is to adopt the Torrens system.

MR. MUNTER—A few years ago, in passing upon a title for the purpose of a large mortgage, I found the title perfect but,

fortunately, the matter was delayed for a few days and, just at the moment that the matter was about to be closed up, and the mortgagors were about to sign the mortgage, a matter occurred to me, which I knew before—but, of course, our human brain is not so constituted that facts within our knowledge occur to us at the right time—which showed that the title was not perfect. Now, another lawyer of equal or greater ability could have discovered the same title but, not having the same knowledge that I had, would have approved it, and the defect consisted in this: The property had been conveyed by the husband and wife to their son. Thereafter the son conveyed the property back to the mother, and the mother and father were now prepared to give this mortgage. Well, that certainly showed nothing on its face, but it happened to occur to me just then that this young man had been adjudicated insane. The abstract showed nothing of it, and especially as the young man had been adjudicated such in another county. The conveyance was made before he was discharged, but while he was out on parole, and there was a title absolutely defective. Therefore, as has been properly stated, all these things prove that the only thing that will place a title on a better basis than a lawyer's opinion based upon what is before him, based upon what he remembers at the time and upon such investigation as he may be able to make on outside facts—which is certainly a very poor basis for real estate title—that the only thing better is the Torrens system or something based upon that; that is, a title based upon a guaranty by the government of its title.

THE PRESIDENT—Next on the program is the report of the Committee on Legal Education and Admission to the Bar.

MR. CONDON—Mr. President, I wish to preface my report with the statement that we have been unable to get together because one member of the committee resides in Walla Walla, another in Olympia, another in Spokane and another in Seattle.

We have gotten together, however, by correspondence, but in that way, as you all know, you cannot get a full expression of ideas, and I simply make this statement at this time so as to not hold all the members of the committee responsible for all the statements contained in this report. I do that in anticipation of the report itself, which is somewhat radical.

REPORT OF COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

To the Washington State Bar Association:

Your Committee on Legal Education and Admission to the Bar begs leave to report as follows:

The law of this state in reference to the admission of attorneys at law should be amended in reference to the following point:

1. *Test of General Education.* Evidence of preliminary general education should be required either (1) graduation from a college or four-year high school of recognized standing; (2) filing with the clerk of the supreme court a law student's certificate of general education. This certificate could be granted by the University of Washington, Washington State College, or the Normal Schools upon satisfactory proof, by examination, that the applicant has an equivalent of a four-year high school education such as is given in the best high schools in this state. The high school course should include at least one year of Latin.

2. *Three Years' Study.* Three years' study of the law, one year of which should be in this state, should be required instead of the two years as at present. No time counted until 18 years of age.

3. *Place of Study.* (1) At a law school in this state or elsewhere; (2) if in law office in this state, certificate of study should be made by the attorney under whom the study is done.

4. *Good Moral Character.* Certificate of good moral character should be made by five reputable citizens of this state who have known the applicant for a period of one year.

5. At least one year should intervene between a failure at the bar examination and a subsequent trial, and the applicant should produce a certificate of study during the intervening year.

6. The oath of office should require that he will commence the practice of the law within three months from the date of admission and to make the same his permanent and usual occupation.

7. *Admission of Attorneys from Other States.* Attorneys licensed

in other states shall be admitted without examination upon proof of the general qualifications required of other applicants, and of three years' practice before the bar of another state. All others should take the examination. All attorneys who have practiced law before being admitted in this state should file with the clerk of the supreme court under oath a statement of all courts in which they have practiced before coming to this state, and a certificate or certificates from said court or courts, as to whether any disbarment proceedings have ever been instituted against them, and if any, how said proceedings terminated.

Respectfully submitted,

JOHN T. CONDON.

FREDK. W. DEWART.

Per. J. T. C.

JOHN L. SHARPSTEIN.

Per. J. T. C.

P. M. TROY.

This report is signed by all the members of the committee except Mr. L. Frank Brown, to whom it is agreeable, but who could not be reached although he was the only member that was in town. And I want to say, about this last part of the report, that no one is responsible for it but the members of that committee who are here. It has only been submitted to Mr. Troy, and I submitted it to him when coming down on the boat. With that explanation I will submit the report to you hoping that, if there is any information desired as to the general laws of admission, you will make it known and I will be glad to give it to you, as I have it here in compendium form, and if it will be of any use in settling this matter, I will gladly answer any questions.

THE PRESIDENT—Are there any remarks on the report of this committee?

MR. SHANK—Mr. Chairman, there is one particular point in that report that commends it to me; that is, that there should be some method pursued that will prevent people coming in and joining the bar who never expect to practice law. We are troubled with people of that sort in Seattle particularly. Men

come there and are admitted to the bar in a usually slack manner and then launch out into real estate or insurance or some commercial pursuit and never have any intent to practice law. I do not mean to say that the regulations should be so rigid as to preclude anyone who has an honest purpose in the matter, and is qualified, from becoming a member of the bar, but one who seeks it and gains it merely for the purpose of being a member of the bar, without any intention of practicing the profession, should not be permitted to come in with the ease that he is now permitted to gain admission. This thought has occurred to me and it seems to me it is something that deserves our consideration, and if there is any practicable way of reaching it—I am not sure that the suggestions made by Professor Condon are practicable—but if there is any way of reaching this question, it ought to be reached and put into force.

MR. CLEMENTSON—There is another question that occurs to me and a plan that I think it would be advisable to adopt in this state, and that is to have a register for attorneys in which to register at the county seats. There is no reason why any man could not come down there to Seattle and practice law. When I first went there to practice I, of course, went to the court and tried to find out what I had to do before I would be admitted to practice there, and the response I received was "You don't have to do anything at all; just go to practicing," and I guess that is the case with all the courts in this state. Most states have an attorney's register where a man, after he has been admitted and goes to practice, registers as an attorney of that court, and it would seem to me that that would be a very good idea to consider, in connection with the paper just read, that there should be a register or something of the sort to indicate who were members of the bar.

MR. REEVES—In the main, I agree with the paper which has been read. There is one feature which it seems to me ought not

to be approved, if I have interpreted it correctly. It sets forth that there should be a general educational qualification prescribed for admission to the bar, which is correct. That should undoubtedly be so. It is the manner of evidencing that qualification to which I object. As I understand the paper, it recommends that the general educational qualification shall be evidenced by certificates from certain schools. It seems to me that the supreme test of fitness to practice law is knowledge of the law itself, which, of course, must be based upon general educational qualifications, but what matters it if the young man desires to practice law gains his general educational qualification in the quiet seclusion of his own room unaided by the advantages of the schools of which he had been deprived, perhaps, through no fault of his? It is much better and he is more likely to be an ornament to the bar if he has all the advantages of a high school or college education, but if he is deprived of those advantages why should we step in and try to deprive him of the opportunity of being a useful member of the bar? If he has the industry, if he has the ability, if he has the perseverance to gather to himself the general qualifications to make a good, useful member of the bar, why not welcome him into the ranks of the profession, no difference how he comes by that information and knowledge?

MR. ROCKWELL—There are a great many men who, in my opinion, are perfectly qualified to practice law and have all the general knowledge that is necessary to do that and, by hard labor, have dug out this knowledge by themselves and yet, if they went before a board of teachers to stand an examination as to general educational knowledge, they would hardly get two minutes into such an examination before they would be thrown out. If the published reports are true as to some of the questions that are asked in these examinations, I think it would be

impossible for any member of this Association to successfully pass one of those examinations.

MR. CONDON—That is a severe comment on the members of the Association, probably, as well as the schools. If that be true, that would be a good reason why the test should not be applied in that manner. The report is based largely on the New York law and the New York law says you can produce a certificate from the regents of the university. I think this plan would be wholly fair—I do not see any other way that you could do it. It would be a great burden to require a citizen to go before a committee at Olympia and take this examination. It ought to be so planned that it would be scattered around and available at different points in the state so that he would not have to go to Olympia twice to make it.

THE SECRETARY—New York has what is called the regents' examination for admission to the bar, a special examination for that, and it could be done the same here. The board should prepare a general list of questions and send them out to these places where the examinations could be taken—uniform questions. It would not be a teacher's examination but it would be a special examination for qualifications.

MR. ROCKWELL—Mr. President, I look at this matter in this way—I may be wrong, but these are my views: A man makes application for admission to the bar and certain questions are handed to him. Now, this committee that is going to pass on these papers, if the committee is composed of the right kind of men, they can judge very well, from the manner in which that man writes out those answers, as to whether he has any education or sufficient education, if need be, to practice law. They can judge by the manner in which he spells words, by the language that he uses in expressing his answers, as to whether he has that education. Now, I do not like to see an examina-

tion for admission to the bar mixed up with school examinations. I think after a man has gone to work, as a gentleman over in the middle of the house (Mr. Reeves) said, and dug this thing out on his own responsibility and has learned the law, we have very little more to require of him than that, and if he has not the ability to express himself as fluently and well as the man who has a college education, he ought not to be excluded from the bar on that account.

MR. LOCKE—Mr. President, I think I can give my friend a couple of illustrations to prove that he is right. I happen to know a gentleman practicing law in Ohio who was a brakeman. His mother was a widow and he took employment as a brakeman on a railroad, and, while in such employment, lost his arm by accident. During the time he was treating his arm he studied law, and if he had been required to pass an examination as to general educational qualifications I fear he would have failed and the country would have lost an able lawyer and Ohio would have been deprived of one of her ablest and most eloquent legislators. I speak of Congressman Kerr.

We have two old wheel-horses back there, Judge Clemens and Judge Summers, and, while their early education had been most sadly neglected, they could try cases most effectively and any man who thought he could use grammar better than they would certainly get left, but as for spelling—well, it was of the “simplified” sort. On one occasion Judge Summers asked Judge Clemens, “How do you spell economical, e-q-u-i- or e-q-u-a-?” and the judge studied a moment, then took down the dictionary, spent a little time turning its pages and then said: “The damned word aint in the dictionary.” If they had been compelled to pass the examination referred to by my friend they would have failed and the bar would have lost two very good lawyers.

MR. PARKER—I am very much opposed to a severe test for admission to the bar, more especially along the line of general education. I mean the education such as is conventional and comes from schools and colleges. The law is different from every other profession in that it is more practical than all. It reaches down into things deeper, and is broader than any other profession known to man, and there is many a man eminently qualified to enter upon the study of law, and many do not until they are along in life to some extent—not very young men—who have not had the advantages of education, as we term it, in the ordinary way. Now, there are states in the Union where the test is very light and very loose. I have in mind Indiana. I never practiced law there or studied law there, but I have heard it said that it requires very little indeed, and I do not suppose it has detracted from the quality of the bar in that state a particle. So, when we view the profession as to what it is and as to the part it plays in the world and compare it with the other learned professions, which are more technical and narrower in their scope, I do not think there is any necessity for drawing any very close lines about us and keeping out of our profession men who have not certain conventional educational qualifications.

MR. (E. J.) BROWN—Mr. President, in regard to educational qualifications for admittance to the learned professions, particularly the profession of law, I believe that no man feels the sting of the lack of education like him who has it not and had not the chance to get it, but the learned lawyer who has a college education certainly has nothing to fear from the man without an education. It is suggested in this paper that a man shall practice three years in another state before he shall be admitted here upon a certificate from that state. I believe if a man is qualified to practice in a court of last resort in another state

and his good moral character is vouched for, that he is entitled to practice in any other state in this land. I do not want to see the law, which is an elevated profession, dragged down to that level to which the learned professions of medicine and dentistry have been. I want to see the law as to the practice of law kept on that high plane that gives every man an opportunity to work out his own salvation, and those on the top story will always have plenty of elbow room. Now, it has been said by Brother Shank that a man, when admitted to the practice of law, should be kept within the straight and narrow lines of the profession, so to speak. It, indeed, would be a bad condition of things if lawyers were not allowed to act as agents in the real estate business or any other business aside from that of the profession, and if we, as lawyers, are going to be allowed to enter the real estate business, I see no reason why a real estate man, if qualified, should not enter the legal profession. I cannot see what harm there is in it. In fact, there are some avocations in order to engage in which in this state, a man is well nigh forced to be admitted to the bar. It is a sort of protection which he must have. I did not hear in the report of the committee anything suggestive of from what source the qualification comes. I may have an idea which is vague and indefinite. I may have an extreme idea as to what constitutes qualification before a young man shall enter the legal profession. My idea of what shall constitute sufficient knowledge may, indeed, be very objectionable to everyone else, and there is no question but what an examiner, if he chose, could always bear down upon the applicant until he is forced out. Today, in every report of our L. R. A., and every volume of the American State Reports, we find there this bone of contention, of all the courts of this land, men who are being deprived of the right to practice their profession, and it all goes to this matter of examination. It simmers itself all down to a point well

illustrated by what a young gentleman from Pennsylvania said to me, when he went to take a bar examination at Pittsburg, as to why it was that there could only be about so many admitted to the bar each year, and in reply to the inquiry one of the attorneys said to him, "Why, an attorney is a clerk of the court and there is just about so much business to be divided among the clerks and we do not want any more;" so unless the law is aided, unless there is a means provided so that a man may defend his cause by appeal and review, a man may be driven from his chosen profession and not allowed to practice. If there is any change in the law, I believe that those subjects in which a man should be qualified should be prescribed and that the examination of the examining board or the board of regents, or whatever it may be, should be prescribed by that law so that the applicant may be advised as to what he is to be examined in, and an appeal, even, should be accorded him so that the courts of this state may know that he is examined with reference to that which is demanded and prescribed by law. I have given a great deal of time—have been forced to—to this question. In no field of the law, I imagine, are there so many different and so many vague opinions. Why, recently I read a decision from Ohio, I think it was, wherein the court had held that the demonstration of what you might call vital science or faith healing was practicing medicine. In other words, *materia medica* had now become a mental science instead of something tangible. If our examining board or board of regents should examine a man upon some branch of learning that has no bearing whatever upon his educational qualification for admittance to the bar what would be the limit, and who would say when the limit was reached? I believe that is a subject that should be carefully considered before changes are made in order that a bad condition shall not be made worse.

MR. TROY—Mr. President, I have been a member, for the last two years, of the bar examining committee appointed by the supreme court and I think that some of these suggestions presented to this body in the report have come from that committee. Now, it has been our experience, in conducting examinations, that the men who have a general education do better than the men who have not, so to speak, any education at all, when they have studied law for a given period; that is to say, a man who has had the benefit of some education—I do not mean a college education nor a technical education—but the man who has improved himself generally and has studied law for a period of three years, in our opinion, does better, very much better, than the man who has studied law for three years without any other preparation. Now, Mr. President and gentlemen of the Association, you heard the paper of one of the learned judges of the supreme court this afternoon, and he suggested how much easier it was for the court to decide a case and get to the meat of any controversy if, in the briefs, each error was pointed out and a clear statement of the case was made. Not long ago we had a man in the examinations who had the required credits, so far as the legal questions that were submitted to him are concerned, yet I feel very positive he would have to have several years' training before he could arrange a paper logically, before he could write a brief to the supreme court that would be worthy of consideration, because he lacked a general education. Of course, admission to the bar should not be made a close corporation. It should be open to all so that all could apply and obtain it if they desired, but it seems to me that the demand that a certain amount of education be possessed by the applicant is not asking an unreasonable thing of any aspirant for admission to the bar. The law schools generally ask it. I do not think there is a recognized law school in the country but what requires an entrance examination or

some showing of general education. Why is it unreasonable, if we are to have an examination at all, to ask for some qualification to entitle one to take the examination? Now, it has been suggested, by one of the speakers, that he does not believe in rigid examinations. Some of the suggestions he makes are true. He suggested that, in one state, he understood that they had no requirement at all in regard to qualification. My idea is this, that we either ought to have no examination at all or the examination ought to mean something. If the state authorizes an examination that requires qualifications, it holds out to the people of the state that the person who has been admitted to the bar has been examined by a tribunal appointed by the state for that purpose and that he is competent to handle technical business about which the ordinary person knows nothing, and that is what we, in effect, say when we give a man a certificate to practice law. We say that he has been examined by us and found qualified. Now, when we recommended this man of whom I spoke for admission to the bar—as we felt we were obliged to do under the law as we understood it—we recommended a man who, in our judgment, could not write an intelligent brief for consideration by the highest tribunal in our state, without considerable further preparation. He would have to acquaint himself with grammar, he would have to learn to logically arrange his brief and to present a clear statement of his case. He could not do that. We have admitted a number of others whom we felt were unqualified in that respect to practice law. This education, I think, ought not to be technical. It ought not to be the teacher's examination that has been suggested by Brother Condon. It ought to be liberal, and it ought to be one broad enough to disclose whether or not the man has sufficient education to warrant us in saying that he is qualified to go out and practice law and is competent to prepare briefs for the supreme court, and has the general education and gen-

eral information, outside of the law, that is necessary in order to qualify him to study and apply law intelligently and to prepare himself for the cases he has to try.

MR. ROCKWELL—Don't you think, Brother Troy, that that committee, in passing upon this man's legal qualifications, are just as competent to pass upon the question as to whether he has or has not general education enough to fit him to practice as any high school body or any university body? If that had been left to that committee and it had been the province of that committee and you had had the power to turn down the man of whom you just spoke and to say that he didn't have the requisite general education, wouldn't you have done it?

MR. TROY—Certainly we would.

MR. ROCKWELL—Then if you have the power, isn't that sufficient without sending him to some school board for examination?

MR. TROY—That might be, but it would add considerably to the duties of the examining committee. I apprehend there are others that might be more competent than I to furnish suggestions and, certainly, I will say for myself, that I had not considered a way that that might be done; but, as I understand the report of the committee, these are only offered as suggestions as to the way it might be done. It has been suggested to me by the chairman of the committee, Mr. Condon, since this discussion arose, that these questions could be prepared by the bar examining committee. I understand that the idea of having the schools do it was suggested largely through the idea that a man might prepare himself without the necessity of going to the capital of the state to find out whether he was qualified to take a legal examination or not. Those are all matters of detail, however, that could be arranged.

MR. FAUSSETT—Mr. President, it would be fortunate if we could have the opinions of all who are present on any sugges-

tion made. If we all concurred they might become law; if we expressed our honest opinions, the contrary might be true. I am in the position described by President Northrup, of the State University, when he said that no one appreciated the need of a thing so badly as he who was in need of it at that time. I am sorely in need of this, as I confess I often do feel when I stand before a young man who has had all the college training that young years and fortunate circumstances may give him, but I stand here bitterly opposed to any iron-clad test or legislation that will require a certificate from a given institution or institutions. What is the test we want? It is this, it seems to me: Does the applicant for the position he seeks have actual knowledge and ability? I want to point to one of the most illustrious lawyers this country ever had, who never was inside of a college—our martyred President Lincoln. Now, let us give to the committee who examine the applicants the means by which they may determine whether they are really qualified or not. Give them that power. You are talking here this afternoon about general education. What do you mean by that? We examine teachers for our schools on general education. Are you going to examine applicants for admission to the bar on pedagogy? That is a part of a general education. Why, general education has become so broad in the last twenty-five years that it has involved the taking in of everything. Or are you going to have a law that will say that applicants shall be examined on certain subjects and, if you please, put into this code what shall constitute a general education? I believe that should be done, but what I want to get at is this, that, by some means or other, the boy who has worked all day and has studied in his room, who has turned his small earnings to some one who is qualified in order that, at midnight, if need be, he might receive special instructions, as some others have had to do in order to grub our way through, if that boy is able to satisfactorily

establish his fitness he should be given an equal chance when he asks for admission to the bar, and no one should say to him that because he has not got a certificate, or because he has not studied at some particular institution for three years or two years, whatever it may be, he shall be denied the right to take the examination. The test is, does he possess the knowledge, does he possess the qualifications to take the examination? And we should give the committee that examines him the power to determine that. His orthography, his penmanship, his grammar and all these things come out in his papers and are before the committee. After all, what is it that constitutes general education, gentlemen?

THE SECRETARY—As is usual in these discussions, they take in quite a wide range and sometimes get quite a ways from the subject. I was surprised that some one did not mention the name of Abraham Lincoln sooner. I want to say, just along that line, that if it had been required of Abraham Lincoln that he have a general education, as a matter of fact, he would have had it, and, by requiring education, as the committee pointed out here, in some form or other, does not prevent anyone acquiring an education privately. I think, as Mr. Troy says, there should be some qualification or there should be none. If we follow the logical conclusion of some of the arguments that have been made, we should wipe out all the qualifications and say that everybody should be entitled to practice law. Someone has said that Indiana has that law. In some form, that is true; yet, as a matter of fact, I presume it is more difficult to be admitted to the bar in Indiana than it is in this state. Mr. Troy has been a member of our examining board for some time. I do not know what his sentiments were at the time he first became a member of the board. I know what they are now. I have been on that board for some time, and I tell you if all these fellows that are opposing the report could be on that board

for a short time they would change their opinions a little. The broadness of the law, the fact of its dipping into every subject, necessitates, I think, that there should be some degree of general education demanded. An attorney is liable to be called into any sort of a case, with no notice. He goes out and defends a teacher in an action where she is dismissed because of lack of qualifications. He is her attorney and supposed to defend her and probably he does not know the first thing about the subject upon which she is supposed to be disqualified. It may be a question of medical malpractice; it may be a jog in a survey; it may be a question on a note, and he is unable to figure the interest. The idea of the report is, not to shut out anybody, but to demand that he more nearly represent what may be required of him.

JUDGE ROOT—Mr. President, I only want to say a few words in regard to this matter, but I am decidedly in favor of some kind of a test that will show general qualification to practice law. Coke said that the sparks of all the sciences are taken up in the ashes of the law. What does that mean? It means that the law has to do with every form of human activity. You cannot speak of any kind of business that the lawyer does not have to deal with. When a lawyer comes to deal with the work of his profession, if he has a broad education, if his intellect has been trained, he is a safer adviser and a more skillful practitioner than if he be without such education and training. I do not believe it should be made a *sine qua non* that he have a certificate from any particular institution. I do not care where a man gets an education, whether in college, university or high school or sitting all night by the back-log, but I do say that before any man should be permitted to practice law and become a member of a profession which, from time immemorial, has been characteristically a learned profession, he should be worthy of it. (Applause.) And, Mr. President, reference

has been made to the fact that some distinguished lawyers who have graced the bar in the United States have not been men of great learning. Very true; very true; and yet, if you will read the words of those same men, they will tell you it is the regret of their lives that they did not have an opportunity to get a better education. Read the words of Lincoln. Of course, they were great men, but if they had possessed a scholastic education they would have been that much greater. I think an attorney ought to have an education approximating at least that which the high school gives. He should have the equivalent of that. Every attorney is required to draw contracts. Look into our reports; what do we find? Case after case growing out of disputes as to the misconstruction of contracts. They are indefinite, uncertain; the punctuation, perhaps, is wrong, that is, the language or punctuation is unhappily chosen to express the idea of the parties, and it comes into court in litigation over it. If those men were educated, if they had had a good understanding of the English language, they would have been more definite and certain and thereby have avoided much litigation. Then, when it comes to the preparation of briefs for the supreme court, the man who has a good education will present the statement of his case in good form and state concisely what is involved, and it helps his client that much. I think we ought to have an examination, to determine whether a man has these qualifications. What branches should we suggest? He ought to be examined in orthography, in the English language, American history and, perhaps, English history. He should have had some discipline in mathematics, some knowledge of the sciences. Examinations, with reference to some professions, as has been suggested, are perhaps sometimes unfair and unjust; and, if they are, there ought to be some way to correct the evil because it is oppressive and wrong. I do not think that any man who has the best interests of the profession at heart can object to

having some means of ascertaining, in a fair and impartial manner, whether a man is qualified or not. In New York the questions are prepared by the University of New York and are sent out to the different places where examinations are to be held. They are kept absolutely secret and those questions have reference to those qualifications which will be called in question. At this time I do not wish to go into the details of method, but, on principle, I do believe that we should demand suitable qualifications and insist upon them. If we are going to do so, there must be some official to judge; there must be some one who has to examine and say whether a party in question is qualified. I do not believe in making any iron-clad rules, I do not believe in demanding a college education or anything of that character, but I do believe that before a man comes into this profession he ought to have his intellect trained to a certain extent. He should be proficient in orthography, know how to use the English language with certainty and correctness, and be familiar with the history of his country and the records of its great men and be not unacquainted with those things which go to make up a general education. They come into a lawyer's life; they are practical things. Of course, you and I know many men who have gone through college and attained a superior education, as far as literary matters are concerned, who never made a success in the law because they were impractical; but a man should have enough general information, outside of his law books, to make his knowledge of law practical when he comes to apply it to every-day affairs. So, Mr. President, without committing myself to the particular details of this report, the trend of it that a substantial, educational qualification should be required, meets my hearty approval.

JUDGE BLACK—Mr. President, it seems to me that we are all agreed—everybody agrees that a man ought to know something. The only question, then, is whether he shall submit to

a school teacher's examination, by a lot of impractical men, as a rule, who do not know very much about the banking business, and real estate and everything that a lawyer has to know, or whether we will submit that to the board that examines him as to his knowledge of law. Everybody is agreed that he ought to know something and ought to have an education. Now, I think a practical lawyer who is fitted to examine a man as to his qualifications to practice law is best fitted to examine him as to that general education which a lawyer ought to have. The school teacher's examination sometimes eliminates a lot of things, and so do these educational tests. I remember an incident, with reference to the examination of a teacher, that I think comes with force as an illustration of the fact that sometimes the most important question is rarely ever asked. A certain schoolma'am down in Iowa, when it was the custom to go to the superintendent's house to be examined, was examined and the superintendent thought she was not qualified to teach school, but as she was so very much in earnest in her purpose to teach the young idea how to shoot, and had already engaged a school, he was very much puzzled as to what he ought to do. He had with him a gentleman who was not particularly noted for his education, and he went to him and consulted him and said: "Now, this teacher I do not know what to do with. She certainly does not know anything about the ordinary rules of education, but she is anxious to teach and has, in fact, engaged a school, and I do not know what to do." "Oh," says the other fellow, "give her a certificate anyhow." "Well, now," he says, "I will tell you what I will do. If you will go down and examine her yourself and you say that she is qualified, I will give her a certificate." The fellow went down, and he says, "How do you do?" "Very well, thank you." "What is your name?" "My name is Mary Jones." "All right. Are you married?" "No, sir." "Do you expect to be soon?" She says,

"None of your business." He went back and reported that all of his questions were answered correctly. She had that qualification of common sense which cannot be taken away from any man or woman anywhere, and without which they cannot succeed, and sometimes we fail to take that very important quality into consideration. She had enough of that good, hard, common sense to know what reply to make to the question asked her as to whether she was going to be married soon. That teacher taught most successfully in that part of the country.

MR. ROCKWELL.—The story just told by Judge Black reminds me of a thing that occurred in Olympia a short time ago at a teachers' examination. One of the questions propounded to a young lady was, "Name one of the great rights of every American citizen," and she answered it, "The right to b-a-r-e arms."

MR. GARBESON.—Mr. President, one of the brothers has voiced what I would have said, but I feel a trifle modest because I am not a member of this Association, but want to be, because it looks to the protection of the profession in which I have been concerned. Now, I would not think of getting a school teacher, male or female, to draw a petition in court for me, nor would I hire a sewer digger to build me a watch. I think I would go to a jeweler that I was sure knew the business and I would go to someone that knew something about the practice of law to assist me in drawing the petition. As has been said, it is one of the most elevated, one of the most elevating occupations and vocations in this life. The same authority that was quoted a few moments ago said of law that "It is seated in the bosom of God, and visits the remotest parts of the universe. All things in heaven and earth, even the least, merit and receive its tenderest care and the most powerful has never become exempt from the strong arm of its power." Now, something that bears that kind of conception, that inspires that kind of spirit in the followers of that avocation and profession in life, deserves some-

what of protection. I do not believe in allowing any school-ma'am or pedagogue to sit in judgment with reference to the qualifications of anybody to practice law. Our best interests will be best served by conducting our own examinations. Some six or eight months ago a young lady who was practicing law in New York happened to see lying on my table some of our processes and noticed the "ss." on the title and she said: "Mr. Garberson, what does that mean?" I said, "Said sign." She said, "Does that really mean that?" and I said, "No, it does not," and I explained to her what it meant. She was admitted to the practice of law and was practicing with one of the most eminent attorneys in New York. She said, "After I get home I am going to ask the old guy and see if he knows," and I will bet he didn't. So I think our business is concerned with a sovereignty, not only in our state but in the rest of the states. Our duty is to see that proper laws are properly enforced and administered and interpreted, and the man who has no adaptability, who is a literalist—and sometimes an illiteralist—has no business with the mighty leveller of professional law, and our courts, our government, state and national, are instituted on that broad administration and expanded view of it, and when they have that interest in it, it is in the interest of the state to appoint a committee which is competent to conduct these examinations and to draw from general experience, from the appearance of the applicant and from the writing, from the spelling, from the composition and from the general expression, both physical and mental, what the make-up of the man is and what his probable conduct will be as an attorney and whether he is fit or not, to be admitted. That can only be done partially, because, although I have practiced law twenty-four years, I undertake to say that I have not learned much of it yet, and the life of a lawyer is a life of continual learning, and it cannot be otherwise so long as the human intellect is progressive.

Understand me, I am not belittling the value of the education of the schools. I do not mean that a man shall not have polish, that he shall not have considerable education, but that he shall have considerable common, horse sense and, if he is in love with the law and devoted to the profession, he will learn more in ten years of practice than any teacher can teach him in twenty-five. A brother has referred to Abraham Lincoln. It was his regret that he had not the advantages of scholastic training. So it is all the way through with those who have not had the opportunity of an education.

MR. CONDON—Mr. President, I ask the privilege of a few minutes in which to close the debate upon this report.

THE PRESIDENT—We have now reached the hour of six o'clock and perhaps it would be as well to continue this debate until tomorrow's session in order to give Mr. Condon the opportunity of closing the debate, as it is his report.

THE SECRETARY—Mr. President, I rise to make a motion to adjourn.

THE PRESIDENT—The motion to adjourn has been made, but before the motion is put I wish to announce that the superior court judges will meet for a few moments, immediately after adjournment, in the room at my right, for the purpose of determining whether they will meet as a body or not. This evening the Cascade Club tenders a reception to the visiting members. The club is situated on the fifth floor of the American National Bank building, which is located on the corner of Colby and Hewitt and if any of you are unfamiliar with the streets of the city, it is the tallest office building in the city. The club is easily reached by taking the elevator, and I trust all the visiting members will avail themselves of the hospitality of the club.

JUDGE ROOT—Mr. President, before adjournment permit me to call attention to another matter. Reference has been made

in the paper to the death of one of the most distinguished attorneys in this state, an honorable member of the Seattle bar, and quite a number of those who are in attendance here desire to attend his funeral tomorrow forenoon. I did not know whether it would be thought wise to adjourn until afternoon, and perhaps there will not be so many go as to interfere with the sessions, but whatever might be done in that particular, the thought had occurred to me that it might not be out of place for a committee to be selected to represent this Association as a mark of its respect. I do not care to make any motion but just to throw out the suggestion of such committee for such action as might seem best.

MR. HUESTON—Mr. President, I move you that a committee of five members be appointed by the chair—probably selecting those who would naturally be there in the morning—to represent this Association at the funeral of Judge Emory tomorrow forenoon.

Duly seconded and carried.

The chair appointed as such committee Judges Root, Rudkin and Morris and Messrs. Shank and Hughes.

MR. PRESIDENT—With the consent of the house, we will postpone further debate until tomorrow afternoon, when it will be made a special order, and the report of the Committee on Obituaries will be carried over to Saturday morning.

Adjournment was here taken until tomorrow morning at ten o'clock.

SECOND DAY.

MORNING SESSION.

THE PRESIDENT—The meeting will please come to order. The first thing on the order of business this morning is the report of the Committee on Uniformity of State Laws.

JUDGE HANFORD—Mr. President, the report is in the hands of the Secretary and, as he has a good voice, we will let him read it. Upon suggestion, the report was temporarily passed.

THE PRESIDENT—The report of the Committee on Obituaries. The obituaries that are to be delivered will be delivered tomorrow morning, and we will pass that. The report of the Committee on Jurisprudence and Law Reform.

REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

MR. ROCKWELL—Mr. President, it has been stylish, for a number of years, for this committee to make a report. Judge Graves and I are the only members of the committee present and we have had several very interesting sessions on a great many questions. We had supposed that the time of this Association would be considerably occupied by other matters, and we have decided that there was only one matter we desired to report to this Association, and that we could do that verbally, because it would shorten the matter, and that is, we recommend to the Association the passage of a law by the legislature changing the manner of commencing action, to go back to the old 1881 Code idea, and, in place of commencing an action by the

service of summons, to commence an action by the filing of the complaint and, thereafter, the service of summons, either that the summons shall be issued by the clerk or by the party bringing the suit and served in the present manner.

THE PRESIDENT—You have heard the report of the committee. Are there any remarks or any discussion?

MR. BELL—I would like to ask, Mr. President, what the committee expects to gain by that change.

MR. HUESTON—We would like to have a speech from Mr. Rockwell, Mr. President.

MR. HOLT—Or Mr. Graves.

THE PRESIDENT—Judge Graves.

MR. GRAVES — Mr. President, there is this much to be gained as a matter of practice, which I think is well known to every practicing attorney in this state. That is, one who would desire to commence an action for purposes of his own and not for the purpose of bringing any issue before a court for trial, issues out of his office a summons. The case is settled. The defendant, perhaps, goes in and answers. The complaint is never filed. If the defendant desires to get rid of this action which he is brought into court upon he must go in and move for an order of dismissal. He must have an order of dismissal entered. And much vexatious litigation is instituted because of the readiness with which a suit can be commenced. This is resorted to for the urging of claims without any merit, whereas, if a complaint is filed in court before summons is issued, it becomes a matter of public record of which the whole world has notice and to which the whole world can resort. As a result, such suits are not instituted and you are not driven into such vexatious trouble as that to which a defendant is frequently compelled to resort to get rid of these actions. Those were the principal reasons which induced me to join in this report.

MR. BELL—Mr. President, I certainly do not agree with the report of the committee. Our experience here has been altogether the opposite. I have found here, in my practice, and a number of other members of the bar of this county have found, that it is very advantageous to be able to commence a suit, have it prepared and summons served and then secure a compromise without any papers being filed in court whatever, which is far less expensive to litigants and more satisfactory to all concerned, and I think the intention of the legislature when this law was passed was for the very purpose of enabling a suit to be begun in matters that could not be settled without some form of litigation, and that, in this way, the plaintiff should be given an opportunity to serve a summons outside of court, and an answer need not be filed there until the case is at issue, and I think the general practice here is not to file the answer until the case is at issue, and then, if it can be settled before the case is finally at issue, it is disposed of without the officers of the court being at any expense or any record being made of the matter. Our practice has been very satisfactory here under the present system and I, for one, think it would not be any change for the better to now go back to the old system.

MR. REEVES—It strikes me that, while the report of the committee is a step in the right direction, it goes a trifle too far. That there should be a requirement that the complaint be filed at a time before the defendant is required to answer, I believe is the proper thing, but that it should necessarily be filed before the action is commenced I do not believe is correct. For instance, my friend Judge Graves desires to start a suit over in my county. Now, under the law as it now stands, he may prepare his complaint and his summons and have them served. He does not, necessarily, need to send over to the clerk of the court of my county to have it filed before it is served. Under the change that he proposes I believe he would be required to do

that. The beneficial results which are evidently sought to be gained by the report of the committee would follow if there was a requirement that at any time prior to the time in which the defendant is required to answer, the summons and complaint must be filed with the clerk of the superior court in the county where the action is brought. In that manner the defendant would then have an opportunity to see whether or not there had been proper service made or as to whether or not the return shows a proper service. It might be that the defendant would desire to move against it for some reason of which he would not be advised until there was a service, and return showing the service filed and that part of it is good. Now then, if you would go a little farther in that connection, and make the failure to file within twenty days to operate as a dismissal of the action without any further steps being taken, I believe that would be a good thing but I do not think the speedy commencement or speedy termination of actions ought to be hampered in any way by legislation.

MR. HUESTON—Mr. President, I would rather hear somebody else talk, but I am unable to see any advantage in the modification suggested by the committee. My friend, Mr. Holt here, has suggested, if I may be permitted to use his language, that he thinks the advantages of the present system outweigh the advantages of the proposed system, but I really do not see the advantages of the proposed system. My experience and observation is that if there is a suit started for the purpose of blackmail, or any unworthy cause, that is the very complaint that is immediately filed, and frequently I have observed that it never goes any farther. In other words, if there is a blackmail suit, or any improper suit started, it frequently stops with the filing of it—the publication of it. We all know that there is no money trying cases in court. Money, in the profession to-day, is made by settling cases, and the present system certainly

does facilitate the settling of cases. I do not believe that one case out of three gets actually on to the calendar. I believe that more than half the cases are settled without ever being filed at all, and the settling of cases is facilitated, I think, by the fact that no publicity is made. In other words, a claim is presented; no attention is given to it; and the next step in the proceeding is the service of papers. It is then clearly to be seen that, unless something is done, there is going to be trouble in the courts. It almost always results in negotiations for settlement, and settlements are made that are never made public, when, if the party had filed the complaint in the first instance, it would have set the opposite party, in fact, both parties, on edge so as to preclude any negotiations, even, and I fail to see any real good cause why the present system is not excellent in that particular, and I do not see the reason why the other system has any advantages. I would like to have them pointed out.

MR. ROCKWELL—Mr. President, the gentlemen who have spoken on this question have only been dealing with meritorious actions. In all the larger cities it has come to the knowledge of a large number of the bar that this manner of commencing actions by the service of summons has been taken advantage of by a certain class of lawyers for the purpose of blackmail pure and simple, both in actions involving the character of some man or some woman, and in actions involving only a very small amount of money. For instance, some man gets a little two-dollar-and-a-half or five-dollar claim against somebody and he immediately starts suit by the service of his summons. He sends a young clerk out and he serves the summons, and it has cost him nothing, absolutely, any more than the paper it is written on and the time it has taken to write it. Well, it may be—absolutely, it may be a case or a claim that is outlawed many years, but if no attention is paid to it, judgment is taken

against this party. If he does not take any account of it, why, he goes and serves either his answer or a demurrer, and the gentleman says —Mr. Bell—that that has not to be filed. Well, that is true; that has not to be filed at that time, but, if the lawyer goes away or something of that kind occurs, advantage may be taken by this unprincipled lawyer—and we have some of them, there is no use trying to disguise that fact. In other cases, some man brings some little action against a railroad company or a street railway company or telephone company or some corporation, with no idea of having the case get into court, and he don't want it to get into court, and never intended that it should get into court, when he made out the summons and had it served. His only idea was to bleed these people and that, through it, he might secure some little money by compromise. That matter has been brought to the attention of the bar in the larger cities. I can see why that is not so much the practice in small towns or in counties where they have no large cities; but in the larger cities it has grown into a matter of absolute and entire blackmail, and if it were a fact that a man had to file his complaint, commence his suit in that way, there would not be half the suits brought that are brought now, not half of them, and it would be just as easy to get a settlement. Nobody objects, if he has got a defense to a suit, to meet the lawyer on the other side after he has filed his complaint, talk over terms of settlement, and make his settlement, and there would not be anything more than the filing fee, in the matter of costs, but, on the other hand, if the defendant has got to go in and defend and pay his two dollars for appearance and then file his motion for dismissal, he takes a judgment for costs that is not worth the paper it is written on, and it is for that reason that this committee has made this report.

THE PRESIDENT—I am inclined to think that some gentleman from Pierce county ought to take sides in this matter. I think Mr. Holt or Mr. Hueston or Judge Parker.

MR. HOLT—Nothing to say.

MR. GRAVES—To point out some of the advantages: In my own practice I have been perplexed by this condition. A summons and complaint is served. Before the return day it is settled. What do I do with the case? The summons has not been filed. How do I know that I am rid of it after I have settled it? The summons and complaint may get into the hands of some other attorneys, as in cases I have known of, and it is filed after settlement has been made. I take a stipulation from counsel that the case is settled and it is dismissed and it never will be filed. I put that stipulation among my office files and it is my only security, and even then, if summons and complaint is filed, I must go and open up default. If the complaint is filed, there is a case of record and I must go and get it dismissed of record, and when I do that I have to go and pay the costs of it. Those are the reasons, in my practice, that have driven me to assent to this report. I believe it would be a better practice and safer practice to make all cases a matter of record as a matter of law, and if the plaintiff does not desire to follow the case and he can settle it in any other way, then the litigants on the other side would not be burdened by litigating, and if it is a case that is intended to be litigated in good faith, then we think the complaint ought to be filed in court and summons issued, either out of the office, as it is now, or by the clerk.

MR. HOLT—Mr. President, so far as the suggestion of Mr. Rockwell is concerned that, in personal injury and cases of that character, the complaint ought to be filed, I will say that our experience in Pierce county is that generally the complaint is filed immediately on commencement of the action, and usually a notice of lien on the judgment, but I will also say to Mr. Graves, that, so far as I have learned in discussing the matter with other lawyers, the practice in settling cases in the manner suggested by him is to take from the opposing counsel a sur-

render of the original summons and complaint and then that disposes of the matter absolutely, but I am opposed to any change in the present system. When it first came in vogue in 1893 I had never even heard of any such a system personally, and I anticipated much trouble arising from it, but I have never heard of any one suffering any serious disadvantage from it, never heard of any frauds being perpetrated, at least, in our county or in the state on account of it.

MR. GRAVES—We would expect nothing of the kind in Pierce county.

MR. HOLT—No, but it seems to me this is an excellent system, and I would hate to be compelled to change and go back to the other system.

THE SECRETARY—Mr. President, under this head, though not touched upon in the report of the committee, there has been no little suggestion among the lawyers as to the unsatisfactory condition of our laws relating to corporations. For instance, the consolidation of corporations, the statute specially permits to combining of interests, as I understand, there is no method provided as to how corporations may actually consolidate; the way provided for an increase of the capital stock is exceedingly cumbersome; and some way ought to be provided so that one may ascertain when a corporation has really ceased to do business and is no longer in existence. I therefore move that a committee of five be appointed to consider our corporation laws and to suggest to the legislature any amendments it may deem necessary.

Motion seconded. Carried.

THE PRESIDENT—Are there any other remarks on the report of the committee? We will now listen to the report of the Committee on Uniformity of State Laws, which has been rescued from the hands of the reporter. The Secretary suggests it

would be well to have the report of this last committee accepted; placed on file, at any rate.

MR. GRAVES—Mr. President, in order to dispose of it, I will move the adoption of the report made by Mr. Rockwell.

Motion seconded by the Secretary.

MR. HUESTON—I move an amendment, that the report be received and placed on file.

Motion seconded by Mr. Bell. Amendment carried.

THE SECRETARY—Now, I move it be adopted. It has been placed on file.

MR. GORDON—And I raise a point of order. It has been disposed of.

THE PRESIDENT—The President sustains the point of order.

MR. HUESTON—I will move a reconsideration, if anyone wants it. I wouldn't want this matter to go without being considered on its merits. I didn't intend to smother it. Just to give the gentlemen a chance to vote on it, if they want it, I will move its reconsideration.

MR. GRAVES—From numerous expressions made here, I take rather kindly to Brother Hueston's motion. It lets us down very easily.

THE PRESIDENT—The motion has not been seconded. We will now listen to the report of the Committee on Uniformity of State Laws.

REPORT OF THE COMMITTEE ON UNIFORM STATE LAWS.

To the Washington Bar Association:

The Committee on Uniform State Laws respectfully reports that since the last meeting of this Association, the fifteenth annual conference of the Commissioners on Uniform State Laws was held at Narragansett Pier, Rhode Island, on August 18-23, 1905, and was the first one of said conferences in which the state of Washington participated.

Under the act providing for the appointment of commissioners on uniform state laws, passed at the last session of the legislature, the Governor appointed as such commissioners Messrs. Charles E. Shepard and Alfred Battle, of Seattle, and Ira P. Englehart, of North Yakima. Mr. Shepard attended the conference, which was participated in by a large number of delegates representing a larger number of states than has been the case for several years past. The sessions of the conference were almost entirely spent on two proposed bills, to-wit: those on Sales and on Warehouse Receipts. Each was very fully and carefully considered and debated in detail, and a number of amendments to each bill were adopted, generally by a unanimous vote. At the conclusion of the conference each of these bills was recommitted to the proper committee for farther consideration, with instructions to report the same, incorporating the adopted amendments, at the coming session, which will be held just before the meeting of the American Bar Association at St. Paul late in August. The conference has had the benefit in the preparation of these bills of the assistance of Prof. Williston, of Harvard Law School, on that of Sales, and of both Prof. Williston, and Barry Mohun, Esq., of the Washington, D. C., bar (the author of a book on the Law of Warehouse Receipts) upon the bill on that subject. It is probable that at the coming session both of these bills will be finally recommended to the states for passage.

The next important subject which the conference proposes to take up is that of partnership; and Prof. James B. Ames, dean of the Harvard Law School, has been employed to draft a bill on that subject and is to report it at the coming conference. In his remarks on that subject at the last conference he pointed out the different theories as to the nature of partnerships held by merchants and by lawyers. Merchants have always looked upon the partnership as a distinct personality, just as a corporation is; while lawyers, who have always treated the corporation as a legal entity distinct from its individual members, on the other hand have steadily insisted that the partnership is simply a group of common owners, common obligors and common obligees, and has no existence independent of that of its members. The conference adopted the mercantile view and instructed Prof. Ames to draft a bill accordingly. As that theory has been favored in this state to a certain extent by the provisions of our probate law for administration upon a partnership after its dissolution by death distinct from the administration of the estate of the deceased member, there should be no great difficulty in getting the acquiescence of this state to such a bill.

Th subject of marriage and divorce, especially with reference to the uniformity of the laws of the different states, has occupied public atten-

tion very largely during the past year. The sentiment in favor of some decided effort to improve our divorce laws took form through the action of the state of Pennsylvania. In the session of 1905 the legislature authorized the Governor to invite the Governors of the other states to send delegates to a congress to assemble in Washington to consider the existing divorce laws with a view to securing uniformity throughout the states. That congress was held at Washington City from the nineteenth to the twenty-second of February, 1906. The Governor of this state appointed as delegates the above-named commissioners on uniform state laws, and in addition thereto Dr. Cummings, of Seattle. The only one of the delegates from this state was Dr. Cummings. The result of the very thorough discussion which the subject had through several days' session is embodied in the following resolutions, which were adopted with practical unanimity:

Resolutions adopted by the National Congress on Uniform Divorce Laws, at its sessions at Washington, D. C., February 19-22, 1906:

I. AS TO FEDERAL LEGISLATION.

1. It is the sense of the Congress that no Federal divorce law is feasible, and that all efforts to secure the passage of a constitutional amendment—a necessary prerequisite—would be futile.

II. AS TO STATE LEGISLATION.

1. All suits for divorce should be brought and prosecuted only in the state where the plaintiff or the defendant had a *bona fide* residence.

2. When the courts are given cognizance of suits where the plaintiff was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

When the courts are given cognizance of suits where the defendant was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief by absolute divorce will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

3. Where jurisdiction for absolute divorce depends upon the residence of the plaintiff, not less than two years' residence should be required on the part of the plaintiff who has changed his or her state domicile since the cause of divorce arose.

Where jurisdiction for absolute divorce depends upon the residence of the defendant, not less than two years' residence should be required on the part of the defendant who has changed his or her state domicile since the cause of divorce arose.

4. An innocent and injured party, husband or wife, seeking a divorce, should not be compelled to ask for a dissolution of the bonds of matrimony, but should be allowed, at his or her option, at any time, to apply for divorce from bed and board. Therefore, divorces *a mensa* should be retained where already existing, and provided for in states where no such rights exist.

5. The causes for divorce existing by legislative enactment may be classed into groups that would be approved by the common consent of all the communities represented in this Congress, or at least substantially so. These causes should be restricted to offenses by one party to the marriage contract against the other of so serious a character as to defeat the objects of the marital relation; and they should never be left to the discretion of a court, but in all cases should be clearly and specifically enumerated in the statute. Uniformity in this branch of the law is much to be desired; but the evils arising from diverse causes in the different states will be very greatly abated if migratory divorces are prohibited.

6. While the following causes for annulment of the marriage contract, for divorce from the bonds of matrimony, and for legal separation or divorce *a mensa* seem to be in accordance with the legislation of a large number of American states, this Congress, desiring to see the number of causes reduced rather than increased, recommends that no additional causes should be recognized in any state; and in those states where causes are restricted, no change is called for:

A.—CAUSES FOR ANNULMENT OF THE MARRIAGE CONTRACT.

1. Impotency.
2. Consanguinity and affinity, properly limited.
3. Existing marriage.
4. Fraud, force or coercion.
5. Insanity, unknown to the other party.

B.—CAUSES FOR DIVORCE—*a. v. m.*

1. Adultery.
2. Bigamy.
3. Conviction of crime in certain classes of cases.
4. Intolerable cruelty.
5. Wilful desertion for two years.
6. Habitual drunkenness.

C.—CAUSES FOR LEGAL SEPARATION, OR DIVORCE, *a. m.*

1. Adultery.
2. Intolerable cruelty.
3. Wilful desertion for two years.
4. Hopeless insanity of husband.
5. Habitual drunkenness.

7. If conviction for crime should be made a cause for divorce, it should be required that such conviction has been followed by a continuous imprisonment for at least two years, or in case of indeterminate sentence, one year; and that such conviction has been the result of trial in some one of the states of the Union, or in a Federal court, or in some one of the countries or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

8. A decree should not be granted *a. v. m.* for insanity arising after marriage.

9. In those states where desertion is a cause for divorce, it should never be recognized as a cause unless it is wilful and is persisted in for a period of at least two years.

10. A divorce should not be granted unless the defendant has been given full and fair opportunity by notice brought home to him to have his day in court, when his residence is known or can be ascertained.

11. Any one named as co-respondent should in all cases be given an opportunity to intervene.

12. Hearings and trials should always be before the court, and not before any delegated representative of it; and in all uncontested divorce cases, and in any other divorce case where the court may deem it necessary or proper, a disinterested attorney should be assigned by the court, actively to defend the case.

13. A decree should not be granted unless the cause is shown by affirmative proof, aside from any admissions on the part of the respondent.

14. A decree dissolving the marriage tie so completely as to permit the remarriage of either party should not become operative until the lapse of a reasonable time after hearing or trial upon the merits of the cause. The Wisconsin, Illinois and California rule of one year is recommended.

15. In no case should the children born during coverture be bastardized, excepting where they are the offspring of bigamous marriages or the impossibility of access by the husband has been proved.

16. Each state should adopt a statute embodying the principle contained in the Massachusetts Act, which is as follows: "If an inhabitant of this commonwealth goes into another state or country to obtain a divorce for a cause which occurred here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this commonwealth, a divorce so obtained shall be of no force or effect in this commonwealth."

17. Fraud or collusion in obtaining or attempting to obtain divorces should be made statutory crimes by the criminal code.

It is proper here to add a few words on the recent decision of the United States supreme court in *Haddock v. Haddock*. The court by a bare majority denied the benefit of the "full faith and credit" clause of the Constitution to a Connecticut decree of divorce, where the matrimonial domicile was in New York. There was a marriage ceremony in New York, and the parties separated immediately afterwards. The husband then moved to Connecticut and acquired a domicile there, while the wife remained in New York, and the husband obtained a divorce in Connecticut on service by publication only and without appearance of the wife. The New York courts refused to recognize the decree, and the supreme court sustained them. The opinion does not overrule, but expressly approves the opinion of the same court in *Atherton v. Atherton*, 181 U. S. 155, and yet it seems impossible to reconcile them. In the *Atherton* case, Kentucky was the matrimonial domicile, the husband by misconduct drove the wife away, and she returned to her former home in New York, and then the husband obtained a Kentucky divorce without personal service on the wife. Under the *Haddock* decision the husband now has one wife (the first) in New York, and another (the second) in Connecticut; the children of the second are bastards in every state but Connecticut, and the husband may be prosecuted for bigamy if he goes into New York. Both of these cases involve the fundamental question of domiciliary jurisdiction—where can a suit be brought which will be binding on both spouses, and the decree in which must be recognized everywhere? Apparently, under *Haddock v. Haddock*, the cases are very few where such a suit can be brought unless both parties live in the same state—and then no controversy as to the binding force of the decree there and everywhere else ever arises. And yet nearly every state in the Union does provide for substituted service in divorce suits against non-resident defendants. The opinion in *Haddock v. Haddock* has evoked severe criticism from the bar generally and from the leading law periodicals. There is a particularly instructive analysis of it by Prof. Beale of the Harvard Law School in the *Harvard Law Review* for June—Vol. 19, p. 586. The whole subject of the interstate validity of divorce seems to be unsettled by this decision. All the greater, then, is the need of obtaining uniformity through the concurrent efforts of the bar and the state legislatures.

C. H. HANFORD, Chairman.

JUDGE HANFORD—Just a few words supplementing the report. It will be noticed that the committee have not indulged

in any recommendations to this Association. The report is prepared to give the Association information of what has been done by national conference. The nature of the subject is such that nothing can be done to accomplish the object of having the laws uniform in the different states except through the agency of a national representative body that will command attention and exert influences in all the states where each separate state has to legislate on the subject. The committee is indebted to Mr. Charles E. Shepard for preparing the information that is submitted in the report. We deem it merely a matter of information and not of recommendation.

MR. McLEAN—I move that the report be adopted.

Motion seconded by Mr. Munter.

THE PRESIDENT—Are there any remarks?

JUDGE WHITSON—If the adoption of the report has any tendency to commit the Association to this “Will-o’-the-Wisp” of uniformity of state laws, I should not be in favor of the adoption of the report. I take it, from what Judge Hanford has said, that it would not commit the Association, because they expressly confined themselves to a very full and accurate statement of what has been done looking to the end which a great many people seem to think is very desirable. Now, assuming that uniformity of state laws is a desirable thing—and the desirability of it is greatly overestimated—I think we will never live to see the day when we will accomplish what the advocates of this matter claim for it, or hope to accomplish. You know how difficult it is to secure legislation. This Bar Association *may* prepare any sort of a bill and recommend its passage and go to the legislature and secure it. I remember a Good Roads Convention that was held in this state some years ago, and a committee was appointed to draft some laws relating to roads. Judge Hanford was on that committee, and I had the honor

of being a member of it. There were several other members five in all, I think. We parcelled out the work. We prepared what we considered, and I consider yet, a most excellent system looking to the building of good roads in this state. That proposed legislation was sent to Olympia. It was disregarded. Even the bill requiring wide tires on wagons was not adopted by the legislature, as I remember it. Now, the difficult thing is this: There are different conditions, there are different interests, there are different traditions in the different states of the Union, and it is perfectly futile, in my judgment, to undertake to bring all these diverse interests together in one agreement upon any particular matter of legislation. Divorce is the great hobby of the uniformity people, and the laws are so radically different in the different states, and the administration of them is so different, that it will be impossible to ever arrive at any sort of uniformity. It can only be reached by a nationalized government. These matters put in the hands of Congress, of course, would be the proper method. So far as I am concerned I should think that would be a good thing, but that, of course, is contrary to our traditions and contrary to our system of government entirely. Now, we will never accomplish this. It is a good thing to talk about, perhaps it is a good thing to hold conventions about, but my opinion is that the quicker we stop it the better it will be for this Association, and we may save ourselves a lot of trouble. I believe that the report does not recommend this legislation or the pursuit of this subject. For that reason I am supporting the motion.

MR. GROSSCUP—I do not agree with Judge Whitson that uniformity of laws is an impossibility to accomplish. I think that something over thirty states have adopted the negotiable instrument act which has introduced uniformity on that subject in all the thirty states; and personally, I think that should be followed by uniformity on the subject of warehouse receipts

and other matters that go directly to commercial transactions. I have never given the subject of divorce any study myself, and do not know anything about it, but I think it would be very desirable to have uniform laws in so far as they relate to commercial matters, and perhaps it is going too far, at the present time, to say so far as they relate to real estate. I think we have not arrived, yet, at the period when that could be taken up, but we have gotten far enough along to have uniform laws in commercial matters, and my idea would be that this Association should recommend to the legislature the continuance of a delegate in this interstate association for the proposing of laws, and we should also give the stamp of our approval, at least, to the direction in which that delegate should work and, with that view, if it is in order, I move an amendment to this motion, that the report be received and that the legislature be recommended to continue a delegate in this association for the uniformity of laws and that he be instructed to work, particularly, to bring about a law on the subject of uniform laws so far as they relate to commercial matters. I agree with Judge Whitson that we cannot go too far and too fast, but I think we can go that far. We can follow the negotiable instrument law, one step, and it will be a step in the right direction, so that a lawyer may know, with some degree of certainty, what the law in another state is.

The amendment to the motion received a second.

THE PRESIDENT—The motion is an amendment to the original motion that the report of the committee be adopted. Are there any further remarks?

MR. PARKER—Mr. President, I have a good deal of sympathy with Judge Whitson's suggestions, but I am also very much impressed with Brother Grosscup's suggestion. Now, just because the ideal is far off is, to my mind, no reason for with-

holding all efforts in that direction. In the evolution of things we have come to that stage when we have practically agreed upon a law touching negotiable instruments, and as time goes on, there will be other subjects evolved where we all arrive at a common ground. It does not seem to me, as Brother Whitson suggests, that, on the question of divorce, we are a long way from that; but in that, I would not withhold a hand on that account, and probably in a year or two we will want to recommend something to the legislature.

JUDGE HANFORD—Mr. President, Judge Whitson has mentioned the difficulty of securing enactments, that, is, affirmative action by the legislature. I think one of the evils that we have to contend against is too much legislation, and if we continue to co-operate with the national association looking to the uniformity of state laws we will be able to hold what ground we have gained. If we have not power and influence enough to influence affirmative legislation we can, at least, work negatively to keep the legislature from changing these uniform laws that have been enacted. Having once arrived at common ground, it is something to have an influence at work to prevent the eternal tinkering and changing which causes a great deal of confusion and trouble to people in business.

There being no further remarks, the question upon the amendment is put to the house and carried.

The original motion as amended also carried.

THE PRESIDENT—We will now listen to a paper by Mr. Henry McLean upon The Evolution of Legislative Methods.

MR. McLEAN—Mr. President, and gentlemen of the Bar Association: When this subject was first assigned me I took some pains to investigate and collect some material, both from historical and scientific sources, but it grew to such magnitude that I found it practically impossible to deal with the subject in a paper like this, and I commenced pruning most severely, and I

finally found it necessary to confine my remarks to one principle and to one application of that principle, and my paper would be more properly entitled "The Evolution of State Legislative Methods," and if the Secretary feels inclined to publish this or does publish it, I would like to have him give it that subject instead of the more general one of "The Evolution of Legislative Methods." (See Appendix.)

THE PRESIDENT—Discussion of this very interesting paper is now in order.

JUDGE BLACK—Mr. President, I have been struck with this paper, and it voices a sentiment that I do not approve of. Legislation should come from the walks of the humble and of all of the people. Men look at questions honestly differing, largely from their point of view, from the kind of glasses we wear. If we wear green glasses we see green colors. This idea of having some superior beings legislate for us I think is wrong. The man that toils in the ditches and rubs shoulder to shoulder with his fellow workingman in the mill; the man that tills the the ground and knows the wants and thoughts of that people, I think are fit for legislation everywhere. It strikes at the very foundation root of our government. It was said, when this great government of ours was formed, when it was a mere experiment, that here were a lot of renegades from all over the world, men turned to this country because of crimes that they had committed, men who were sent to this country because they were not thought to be good citizens of others; that this people could never govern themselves and never legislate for themselves and never build up a great government. This has been an experiment that stands in the face of the world as proof of the fact that men—the ordinary, every-day men, are fit for legislative duties and fit for government. This grand country of ours, the grandest in the history of all the world, it seems to me, stands forth as proof of this fact that there are no men so constituted

naturally that they have the supreme right and have the supreme power and have supreme wisdom and ought to legislate. I tell you that the principle of all legislation is common-sense; common-sense, the ordinary common-sense of every-day people, the ordinary, every-day man that we lawyers and judges sometimes look upon as not having the wisdom that we have attained—out of it all, liberty and justice are evolved from the common ranks, and I believe in that representative body that takes the ordinary man and puts him in the hall of the legislature to give his common view of life along with the other men, the great men, who, if they have that superior wisdom, will have that superior power with their fellows, and out of it all good will come. That underlying feature that we must have some men set apart, like the supreme court, to frame our laws for us, I think savors of that principle that has built up monarchies, the divine right, the great power that leaves it to the nobility of the world to frame laws for us. As an American, proud of my country, proud of its growth, I do not approve of that idea that there are some men so great and so wise that these powers of making laws for us should be delegated to them and that the ordinary, every-day man is unfit for self-government.

THE PRESIDENT—Are there any further remarks?

MR. ASHTON—Mr. Chairman, in justice to the writer of this paper, it seems to me that the remarks of the last gentleman are somewhat out of order. I do not believe that when a member of the bar is called upon, a busy lawyer, to devote his time and his labor to the presentation of a paper to an association of this character, that he, or his paper, should be particularly or thoroughly placed on trial. Papers of this kind, as I understand it, are read for the general benefit of the Association. If they have their respect, well and good; if they have not, why, certainly no harm has come to the Association, so I think it is

rather severe upon the writer of the paper to have it criticised in this manner, and I simply rise up in defense of one who cannot very well speak in his own behalf, he having been the author and reader of the paper. I think the criticism is rather out of place and excessive.

MR. HUESTON—Mr. President, a thought occurs to me in this connection. I have given consideration to the condition that confronts us with reference to our state legislation, and a condition does confront us whether we like it or not; and the trouble is, and the remedy perhaps may be, that, under the present system, the people do not have any show at the adoption of the laws that are to govern them. That is the purport of the paper, and that is the fact I think. In other words, these people who are competent to govern themselves do not have a chance, under the present system, and if my good friend Judge Black had attempted to get some legislation that was just and meritorious I think he would see the point. Now then, I am not arguing the question at all, but this has struck me, that there are two ways, now, by which the evils—or the conditions, I will say, not evils—the conditions that confront us may be materially improved at the present time and, with the risk, perhaps, of exciting a little discussion, which is my purpose at this time, I want to say that the first point that I make is that, by the adoption of the system of primary election, whereby we get real representatives, we could materially improve the condition. If anybody thinks differently, of course, I would just like to hear him say so. Second, by enlarging the idea of referring momentous questions to the vote of the people of the state under some system of referendum—using that term, of course, in the good meaning instead of the bad meaning, you know—we could also materially improve the legislative department of our state. In other words, we have never known of the people of a whole state to go wrong on a constitutional amendment. I never

have. Every time that I have ever observed the people of a whole state vote on either a whole constitution or on any single amendment I have never known an instance where they did not improve the condition, and they can put that simple expedient into operation in this or any other state and submit the important questions to a vote of the people, and thereby improve the the condition of the laws of the state, and very materially improve the condition of the citizenship of the state, by the resulting enlightenment that would come from urging a campaign of that character. Therefore, while I do not care to actually move that this bar go into those questions at all, I submit that there are two ways by which the legislative condition in the state could be materially improved.

THE PRESIDENT—Is there any further discussion?

JUDGE BLACK—Mr. President, I just want to say one word. My brother thinks that papers ought not to be criticised. Probably, by reason of my inexperience, I did not understand the thing. I supposed that when a body of lawyers got together and a paper was read, that persons who disagreed with it might express themselves, but, if that is wrong, I want to apologize. I find, as a rule, that lawyers are pretty good to stand criticism.

THE PRESIDENT—Is there any further discussion?

MR. REEVES—Mr. President, I was in hopes that other and older members of the bar might further discuss this paper. It is said that "Fools rush in where angels dare not tread," and, if that is the case, why, I am willing to play the role of fool. I concur heartily in what Judge Black said and, in doing so, I am sure that I make no criticism of the gentleman who wrote the paper. He is to be commended for his fearlessness, for even the radical ideas and the emphatic way that he put them forward in the paper, as well as the learning, industry and research which are shown in the preparation of the paper; but,

if it comes to a place where we must agree that the American people and the people of the state of Washington, do not know what they want and are incapable of getting that, then I want to be recorded as a dissenter. It may be possible that the people, at the present moment, do not know exactly how to get that which they desire, but it is not true that they do not know that which they do desire. If you will go with me into the country to the agriculturist where he is harvesting his golden grain, if you will follow me to the horticulturist where he is now picking the peach from the tree and the grape from the vine, or if you will go into the factories where they are converting Nature's products into those things to be put into industrial pursuits, you will find, with one cry, when you ask them what they desire in the way of legislation, they will tell you that they desire that legislation which gives every man, woman and child in this country equal opportunities and equal burdens in the government. They want equal taxation and they want equal opportunity. If they cannot get that, then the exalted minds to which reference has been made in this paper should point out to these with the inferior endowments the manner in which those good things may be secured. I am willing—being from Missouri—to be shown, but I am not willing that somebody, as to whom I have no voice in his selection, shall legislate for me or make laws for me. It may be that a tribunal suggested by the paper would evolve a set of laws that would be far superior to those we have on the statute books at the present time, but I submit that a great many of the laws that we have at the present time were evolved, not by the people, but by some such tribunal as has been suggested in the paper. Now then, it may be that a body of men, selected in the manner that the supreme court of this state is selected, could better legislate than the man from the plow. I am willing, however, to trust legislation to the people. I state, on the authority of the great and

immortal Abraham Lincoln, that the government is for the people and must be by the people. Now then, if it is by the people and comes from the people, it does not come from a body of men that are far removed from the people. I undertake to say that even a lawyer, who mixes in daily life with people from all walks of life, if he mixes only in the matters that are brought before him by reason of his professional duties, has not got the proper conception of the ideas and impulses and desires of the people. He must get closer to them; he must get down; he must look at things as they look at them; he must feel them as they feel them; and when he sees and feels as they do he will then know and realize that a spirit of fairness, a spirit of patriotism is manifest at every move, and it is directed by a greater degree of intelligence than is commonly credited. I think the people can be safely entrusted to make their own laws.

MR. McLEAN—Mr. President, I would like to set these gentlemen right on this paper. I have got no defense to make for it. I think possibly I am more radical along the lines they talk than they are themselves. The paper expressly endorses the initiative and referendum and perhaps many of them would not go to that extent. My researches on those particulars of the government in Switzerland and other places have led me to the conclusion that the initiative and referendum is the most conservative system of legislation that can be adopted and I believe the history of those places where it has had free scope for any length of time will demonstrate it. This has been demonstrated in our state in the constitutional amendment. It has created some remark. The people are afraid of it, but when they take time to investigate it they will find that the best interests of society are conserved by it by giving the people a free and fair chance to govern themselves. The point in the paper is not that we are to restrict the people but it is to give the people a chance to simplify, systematize and unify a system of government.

MR. HOLT—Mr. President, that was the idea I gathered from the paper of Mr. McLean, and speaking from my knowledge on the subject, and from some experience of my own in the past, I desire to point out one instance in which his idea is put into very successful operation. Of course, his suggestion that a body be appointed to legislate, like the supreme court of the United States, is idealistic in character—a mere suggestion, but in the old state where I lived—Mississippi—it was possible, but it is impossible in this state, and that is where I place the source of a great many evils, other than to our legislation—it was possible to adopt a code as a whole. In the early history of the state a very able man, Poindexter by name, prepared a code. From that time on, at succeeding sessions of the legislature in 1857, 1871 and in 1880, a code committee was appointed composed of one or two of the ablest lawyers of the state. They prepared a code which was a revision and a re-enactment of the laws as they stood and that revision was submitted to the legislative committee of the next session of the legislature and from that committee it was submitted to the representatives of the people, the legislature, and was adopted as a code as a whole, and we have, I think, the most absolutely perfect code that can be imagined. There is less confusion. The practice of law is simpler. Technicalities are comparatively nothing. A man can almost fall into the supreme court and yet the two systems, the common law and equity, are separate. Yet, by reason of the fact that the code has always been in the hands—its preparation, its form, its general structure, has been submitted to some one or two individuals of proper learning and capacity, it has remained practically the same code, unimpaired, and we have, I think, the finest system of practice and laws in the country. That is the same idea, in another from, suggested by Mr. McLean. I think the general idea underlying his paper is absolutely correct.

MR. McLEAN—Mr. President, I would just like to give one other illustration. Lord Macaulay prepared a penal code for India. It is the only piece of English legislation that they have been able to adopt in India that is at all satisfactory to that country, and it is a single-handed piece of work prepared by Lord Macaulay upon the basis of the English jurisprudence. It is a great success, and the only success that they have been able to carry out in India in jurisprudence.

Adjournment was here taken until 2:30 o'clock p. m.

AFTERNOON SESSION.

THE PRESIDENT—The meeting will now come to order. Is there any further discussion on the paper that was in process of discussion at the time of the adjournment at noon? Is the report of the Legislative Committee now ready?

The report is read by the Secretary.

REPORT OF COMMITTEE ON LEGISLATION.

To the President and Members of the State Bar Association:

Your committee to whom was referred the resolution recommending an increase in the salaries of the supreme and superior judges, beg leave to report as follows:

We recommend that the next legislative assembly be asked to fix the salaries of judicial officers as follows:

To judges of the supreme court, \$6,000 per annum.

To judges of the superior court residing in counties the county seat of which exceeds 50,000 in population, \$5,000 per annum.

To other judges of the superior court, \$3,500 per annum.

And we do further recommend that a committee be appointed to consist of the President of this Association and two others to be appointed by him to endeavor to make this recommendation effectual by legislative enactment.

Believing that the various provisions of our code relating to legal conduct and procedure are satisfactory, we beg to submit this as the report of your committee. Respectfully submitted,

LEGISLATIVE COMMITTEE,

By B. S. Grosscup, Chairman.

THE SECRETARY—Mr. President, inasmuch as this resolution was referred to the Committee on Legislation and the Committee on Judiciary jointly, if there is no objection I will read the regular report of the Committee on Judiciary as it deals with the same subject:

REPORT OF COMMITTEE ON JUDICIARY.

To the Washington State Bar Association:

We, your Committee on the Judiciary, beg leave to submit the following report:

Owing to the increase of work which now devolves upon the supreme court of this state and upon the superior judges in counties containing cities of the first class, we believe the time has arrived when there should be an increase in salaries. The increase in commercial importance of this state has naturally brought with it not only a large increase in litigation, but promises to continue at the same rate of increase if not greater than is shown by the records of the courts during the last few years. We therefore recommend the following:

First. That the salaries of the judges of the supreme court be increased to \$7,000 per annum.

Second. That the salaries of the superior judges in all counties containing cities of the first class be increased to \$5,000 per annum.

Third. That the President of this Association appoint a committee of five who shall draft an act to be presented at the next session of the legislature, and to use all honorable means to secure its early passage and approval.

THE PRESIDENT—You have heard the report of the committees, gentlemen. What will be done with them?

MR. DOVELL—I move the adoption of the report of the Committee on Legislation.

Motion seconded.

THE PRESIDENT—Are you ready for the question?

MR. BELL—Mr. Chairman, I would like to ask why the superior judges residing in cities of fifty thousand or more, are entitled to a larger salary than some judge outside who may do twice as much work? I would like to have some gentleman answer that question.

THE SECRETARY—It is presumed the nickel-in-the-slot machine is not running in the smaller towns.

MR. DOVELL—Mr. Chairman, I have had some part in the framing of that report, and I suggest that it might be proper that I state what we had in mind when we framed the report as we have. We have been convinced that the present salary paid the judges in the cities is totally inadequate to provide them the necessary means to live on, and we believe that the expense of living in the smaller cities is much less than it is in the three cities of Seattle, Spokane and Tacoma, and just basing it upon the cost of living in the respective cities, we have thought that it would be proper that the salaries of the judges who happen to reside in those cities be fixed at five thousand dollars, and then thirty-five hundred would be about the sum which would afford about the same means to those who live in the smaller cities. Now, that was the idea of the committee. We would be very glad to hear any discussion and, if the sense of the Association is different, would be glad if the sense of the Association, instead of the sense of the committee, were reported to the legislature.

JUDGE BLACK—Mr. President, I do not think Mr. Bell need worry. We expect to have fifty thousand people here in Everett before long.

THE PRESIDENT—Mr. Bell was looking after some of the smaller towns. I don't think anyone would imagine that he referred to Everett.

MR. PARKER—Mr. President, I am considerably in sympathy with the general trend of the report, but I have a few objections to it. One is the objection suggested by my brother here (Mr. Bell). I do not, seriously, see any reason for giving a man more in a large place than in a small. Each judicial district is formed upon the theory that it provides the proper amount

of work and it certainly requires the same amount of ability. As to the question of living, I am not able to see that the difference is material between one place and another, especially in a district where a judge has to travel around, but that is not the most serious objection I have to it. I would not object to the superior and supreme judges getting as large a salary as is here suggested, but I view it from a practical standpoint, and I think this is overreaching. It is going to that extent where we cannot entertain any hope of the legislature ever paying any attention to us. Now, I think five and six thousand is considerably beyond the average that is paid throughout the Union for that kind of work, and, while I would not have any objection, and would concur that it is none too much, I believe if we were to recommend to the legislature a scale of about four and five and making it uniform throughout the state, we would have more reason to hope for success. I believe four thousand for superior judges and five thousand for supreme judges, while possibly not enough, is a great deal better than we have now and we could, I think, much more likely expect concurrence in such ideas by the legislature. I simply suggest that. I even have not a motion to make in connection with it.

THE PRESIDENT—Are there any other remarks on the report of the committee?

THE SECRETARY—Mr. President, two years ago we prepared a bill providing for an increase in the salaries of the supreme judges and had it before the legislature. At that time I prepared a schedule of the salaries paid by the different states to their judges of the courts of last resort. While I haven't that list here, yet I have the data for part of it. I should be glad to give it if it would be of any interest.

THE PRESIDENT—I think it would be interesting, and suppose you read it.

. .

MR. GRAVES—Mr. Secretary, I would like to inquire if, in your investigation of the statutes, you found that in any state of the Union there was any distinction made in the salary of the judges of courts corresponding to our superior courts in this state, whether they lived in large cities or in rural districts?

THE SECRETARY—I did. I found many of them that way. For instance, in the city of New York the supreme judges—corresponding practically with the superior judges of this state—get seventeen thousand five hundred dollars a year, while I think those farther up the state get seven thousand dollars a year; probably some of them as low as five; I am not certain as to that, but I know there is more than ten thousand dollars difference. In Illinois I found it was the same way. The Cook county judges get very much larger salaries than the other judges.

Some of the states have the salaries fixed by the constitution, in fact, most all of them either in the minimum or definitely. Oregon's constitution, for instance, fixes the salaries of her supreme judges at \$2,000, but the legislature indirectly increases that by allowing nearly that much more for expenses. I found one state, I have forgotten now just what one it was, where the constitution fixed the salary, and the legislature almost doubled it to compensate the judges for preparing the *syllabi* to their opinions. New York allows \$3,700 to each judge for expenses. So the figures I shall give may not be the full compensation: Cal., \$6,000; Colo., \$6,000 and \$4,000 for trial judges; Conn., \$6,500 and \$6,000 for trial judges; Del., \$4,000 and trial judges same; Idaho, \$4,000 and trial judges \$3,000; Ill., \$7,000 and trial judges \$3,500; Ind., \$6,000 and trial judges from \$2,500 to \$5,000; Iowa, \$6,000 and trial judges \$3,500; Kan., \$3,000 and trial \$2,500; Ky., \$5,000, trial, \$3,000 to \$5,000; La., \$5,000, trial, \$2,000 to \$4,000; Me., \$5,000, trial, \$5,000; Md., \$4,500, trial, \$3,600; Mass., \$8,000, trial \$6,500; Mich.,

\$7,000; Minn., \$5,000, trial, \$3,500; Miss., \$4,000; Mo., \$4,500, intermediate court, \$5,500, and trial, \$2,000 to \$5,500, according to population; Mont., \$4,000, trial, \$3,500; Nev., \$4,500, trial, \$4,000; N. J., \$9,000; circuit judges, \$7,500; N. Y., \$10,000, with \$3,700 for expenses, trial, \$7,200, except in the first district—New York city—where it is \$17,500, trial judges have also \$1,000 for expenses; North Dakota, \$5,000 with \$1,200 additional for expenses; Ohio, \$6,500, trial, \$3,000 to \$6,000; Oregon, \$3,500, trial, \$3,000 to \$6,000; Penn., \$10,000, intermediate appellate, \$9,000, trial \$5,000 to \$8,000; R. I., \$5,000, trial, same; Tex., \$4,000, intermediate appellate, \$3,500, trial \$2,500; Utah, \$5,000, trial, \$4,000; Va., \$4,000, trial, \$2,000 to \$4,000; W. Va., \$4,500, trial, \$3,300; Wis., \$6,000, trial, \$4,000.

There is another thing I noticed in my investigation: few of the states have so short a tenure for their judges as our state. The terms will range from life, as it is in Massachusetts, Pennsylvania 21 years, New York 14 years, to as low as four years, but the majority of them is about ten years.

JUDGE JOINER—In New York, you spoke about seventeen thousand five hundred. Those are the city judges. I think the supreme judges throughout the state get the same compensation.

THE SECRETARY—The supreme judges in the First district, which takes in New York city, get seventeen thousand five hundred dollars a year. The state is divided into four districts.

MR. BRIDGES—Mr. President, as being from one of the outside and rural districts, I wish to oppose the report. According to the fees collected by the clerk of our county, it is fourth in the state in the amount of litigation, and yet the county seat is a town of about a thousand people. Now, I do not understand why a judge transacting the business of that county should

not receive the same salary as the judges who transact similar business in larger counties. In still other districts one judge has three or four counties, as, for instance, Judge Rice, and his duties are very arduous. I do not believe there should be any distinction in the amount of compensation.

MR. GORDON—Mr. President, the only fear that I would have at all in placing all the superior judges on a basis of equality as regards salary would be that it would involve too large an expenditure and, undoubtedly, would kill the entire measure. I do not know how many superior judges there are in the state outside of the three cities that have been mentioned. I should suppose, however, that there are fully thirty. As to the difference between thirty-five hundred and five thousand—fifteen hundred—it would be about forty-five thousand dollars a year to be added to that proposed by the committee, and it seems to me it would be too much to expect of a parsimonious legislature. I believe, therefore, as a practical proposition, we ought to adopt something in line with the committee's report or abandon the idea. I also conceive, Mr. President, that there is much room for the difference suggested by the committee. I am not prepared to combat any of the statements that have been made as to the work in some of these outside districts, but I am in a position to say that in many of the outside districts there is not one-third of the work that is exacted of the judges in King, for instance, and Spokane counties. I believe, on the other hand, that it has been the policy of the legislature—a policy that should commend itself to the bar—to, as nearly as possible, give these different counties a judge—give each county a judge of its own. It is a matter of convenience to the bar, a policy that would have to be abandoned if the expense of the judge's salary is to be as onerous as that proposed by my friend. There are undoubtedly districts outside of these three principal counties, where the

work of the judges today is as great as that of any of the judges in the three named, but they are exceptions, in my judgment, Mr. President, and I believe, on the whole, it will be found that in the far greater number of districts today the work is very much less than that of the judges of those counties. No man who has lived in the outside counties and also lived in any one of these three cities can have any possible doubt about the difference in expense. There could be no question about that part of it; a difference that certainly must be nearly one thousand dollars per year. I take it that a judge of the superior court of King county, for instance, in order to maintain himself with an equal degree that a judge out in one of the smaller counties is enabled to maintain himself, must incur an added expense of easily one thousand dollars per year, so there is, not only as regards the volume of business or measure of responsibility, but the actual expense involved, much room for the discrimination of the committee. Now, as regards the general proposition of salaries being too high, and the practicability of the proposition, I do not think so. I believe, not only as a matter of justice to the judges, these salaries should be fixed at least in the figure suggested by the committee, but I believe each member of the bar has a personal interest in it. I believe when you get your court, as now, at a salary, the supreme judges, at four thousand dollars a year, you cheapen the practice of law. Any attorney who has had occasion at all to visit outside states has been confronted with the sneer that has gone around when a lawyer, for instance, in New York, asks, "What do you pay your judges out there?" It cheapens the bar and, to a certain extent, it affects your compensation and my compensation and the compensation of all of us, so I feel we have a selfish interest in the matter, outside of the broader question of compensation to these men who undertake these onerous

duties. Getting back again to the practical side of it, a star must be made. It had occurred to me that this was an exceedingly opportune time to go to the legislature with an insistent demand for this raise. There will be no senatorial fight to engross the attention of the members this coming session; the state is fairly prosperous. There is no reason why the question cannot have a fair hearing and determination upon its merits and I believe, Mr. President, if we confine ourselves to what is practicable we may be able to accomplish some beneficial result. Undoubtedly it is not entirely fair to some judges but it will help. An additional thousand dollars is better than the three thousand they are getting now, but I ask you to consider whether, if you put on the additional burden of three thousand dollars, you are not doing a hurt to the gentlemen you desire to help. If the matter was one that rested with us entirely for determination, I believe there would be very little reason for difference of opinion, but I believe the overshadowing, overreaching purpose here should be to make a start to accomplish something that ought to have been accomplished long before, and undoubtedly some change can be made in the proposition when it gets to the legislature, but I believe if you should put this resolution through on the basis of five thousand dollars, indiscriminately, for the judges of the superior court, and six thousand for the others, you will immediately start an agitation in the state that will mean the death of your measure long before it is born.

MR. REEVES—Mr. President, it would undoubtedly be a very difficult matter to so adjust the judges' salaries that exact justice be done on all scores and injustice done on none. In the smaller counties, where the county has a judge unto itself, the schedule proposed, in all probability, would be about right. In districts composed of several counties, where the judge works from morning until night, and sometimes from night until morning.

convening as early as half past eight o'clock and running until half past eleven or twelve, day after day, and compelled to do that in order to get through with the business, I see no reason why a judge in such a district as that ought not to have the same salary as one in a city of fifty thousand. Of course, we are in a class where we expect to reach it pretty soon ourselves, so it don't hurt us very much, but it seems to me that those matters should be taken into consideration. If, however, the proper arrangement of a schedule of salaries would be prevented by taking one or two such districts into consideration, then I agree that it is better that those districts suffer in silence rather than prevent the meting out of good to other districts or other counties. I believe a very happy solution would be to instruct the proposed committee on this kind of legislation to have the further duty imposed upon it of readjusting these districts and, wherever possible, secure unto each one of the counties a judge of its own. I am not sure whether there is anything before the house at the present moment. If it has been moved that this resolution be adopted, then I want to move that for an amendment. I am in the dark.

THE PRESIDENT—The matter at issue is the adoption of the report of the Committee on Legislation.

MR. REEVES—I move to amend the report by instructing the committee proposed by the resolution to work for a proper readjustment of the districts throughout the state, and wherever it seems advisable, to secure, if possible, a judge for each one of the counties.

THE PRESIDENT—The Chair would be inclined to think that that was not germane to the original motion. It is an entirely different subject and could be covered more adequately by a separate resolution offered for that purpose.

MR. PARKER—I have been requested, and I am inclined to do it myself, to make a motion to amend the report, that we

recommend that the legislature fix the salaiaies of all superior judges in the state at four thousand dollars and of all supreme judges at five thousand dollars. I make that motion.

MR. PRESIDENT—You make that as an amendment to the committee's report?

MR. PARKER—Yes, sir.

The motion received a second.

MR. PARKER—I make this as a practical solution of the difficulty. I do not believe the legislature will go as far as the committee suggests, and I believe it is putting it in such shape that we will accomplish more. I view it as a practical proposition, that is all.

MR. GROSSCUP—Mr. Chairman, I wish to oppose the proposed amendment. We are a young state, but rapidly growing in business and population, with more litigation, probably, than any other state of the population in the whole Union, and more important litigation, in proportion to population, than any other state. Not only that, but the very youngness of the state makes the questions that come before the supreme court important for decision and, for that reason, I think our supreme judges should be paid at least a living salary. Now, we all know that any man that is fit to serve on the supreme court bench will make, in prosperous times, twice the amount in private practice that he receives as salary, and anyone makes a sacrifice by going on the supreme court bench, but he is willing to make that sacrifice provided he can live on the salary that is allowed. If he is not given a salary sufficient for him to live, some of our best lawyers would be barred from the supreme court bench because they are unable to take the place. Devoted to the law, they are willing to serve the state provided they are given, by the state, a living. Now, why should we, when we propose a change, cut the proposition down below what all of us believe

to be a fair salary? We are going to the legislature to ask that this change be made. Why not put up to that body that our convictions are on that subject? We may not get it, but we are a great deal more likely to get five thousand dollars if we go there with a six thousand dollar proposition, than if we go with five. The fact of it is that a little matter of seven thousand dollars to this state to get better men upon the supreme bench is a mighty good investment, and the legislature could better afford to lop off a few other things, if it becomes necessary, and I think we should urge, with all our energy, that the supreme court judges be paid a living salary and that living salary certainly should not be less than six thousand dollars. It ought to be more, but probably it would be radical to propose more at this time.

Now, as to superior court judges: My recollection is that half of this salary is paid by the state at large and half by the district in which the judge serves. Now then, these larger counties, with their larger wealth and taxable property, are able to pay their judges more than the smaller counties and, as has been suggested, the judge requires more to live. Lawyers command larger fees so that they work together. The better class of lawyers in these larger counties receive a larger compensation. The aim should be to bring to the bench good lawyers. Good lawyers make a good bar. Good lawyers make good law, and good law makes a prosperous and peaceful state, and this is an important matter. It is important that we should bring to the bench men of ability, and when we bring to the bench men of ability they will perform their duties so that there will not be so much litigation as if men of less ability are called to the bench, and, in that way, there will not be such pressure for an increased number of judges. Three good lawyers in one of these large counties, or four, would do more business than a dozen poor ones and we should pay a salary that will enable

the people to reach out and bring to the superior court bench the best young lawyers in the community, and when those young lawyers have been educated on the superior court bench and have shown their ability, they ought to be promoted to the supreme bench, and then we will have a judiciary we will all be proud of.

MR. KANE—Mr. President, for the information of the Bar Association the method of payment of the supreme court judges and county court judges of the state of New York is as follows: County court judges are paid six thousand dollars a year and permitted to practice. The supreme court judges in the outlying districts are paid twelve thousand five hundred dollars a year. In other districts they are paid fourteen thousand. In New York city they are paid seventeen thousand five hundred. The reason why we pay more in New York city is because they have larger duties to perform; that is, the terms of their court are longer, while in outlying districts, in the second judicial department, they would only take up six months of their time in trying court cases, from one county to another, while in New York they would take up probably nine continuous months. Now, in the city of New York, police judges, I believe, are now paid ten thousand dollars a year. Magistrates and the simple justices, I think, are paid the same. Bearing that rule in mind, the supreme court judges give up practically all their practice. They are denied the right to practice and therefore they must be properly compensated for their work. Now, I think that the same theory should be advanced in the state of Washington. I think that the superior court judges in the large cities, where they are compelled to devote ten months of the year to the duties of trying cases, they should receive a better remuneration, really, than is recommended by this committee. I should say, if they said in King county that the judges should receive eight thousand dollars a year, I, as a taxpayer, would

vote and heartily support that contention, because I know what comes of it. In the outlying districts, where the work of the judges is not so heavy, that is to say, where they hold court for three, four, five or six months during the year, the compensation should be—while not as large, should be as much as five thousand a year and that would enable them to properly live, as they are cut off from practically any income from their individual practice. I do not think you could tempt me with a judgeship at three thousand dollars a year, but I think if you said it was seven or eight I might make an attempt to get in with the boys and get nominated, but I think when they pay them eight thousand in the counties of King, Pierce and Spokane, that that would be a fair compensation, and the public at large should be taught—the people, the laymen, should be taught and told, that if they properly compensate the judges of the superior court and of the supreme court the result will be that they will get a good class of men to perform their duties and they will be properly recompensed.

MR. REEVES—I desire to move an amendment to the amendment that, in districts composed of two or more counties, the salary of the judge be five thousand dollars.

THE PRESIDENT—It is always confusing to adopt the rule of parliamentary law which permits amendment to pile up on amendment. We have one amendment now. I am not very well posted on parliamentary law, but I think the better rule is to allow one amendment to be voted on at a time, unless the house prescribes some other way. It is immaterial. What has been the rule? I will ask Judge Whitson, the last President, what has been the rule of this Association with reference to amendment on amendment?

JUDGE WHITSON—I think, as far as I am able to say, that an amendment to an amendment will be allowed, but not further.

THE PRESIDENT—The amendment will be allowed. The amendment to the amendment is that all judges having two or more counties embraced within their districts be paid five thousand dollars a year.

MR. GRAVES—Then in cities of fifty thousand they would only get four thousand. The point is that that is not an amendment to the amendment but it is an amendment to the original motion.

THE PRESIDENT—You make that point of order?

MR. GRAVES—Yes, sir.

THE PRESIDENT—The Chair is inclined to sustain that point of order, that the amendment is an amendment to the original report and not an amendment to the amendment.

MR. PARKER—It is not seconded, is it?

THE PRESIDENT—It has not yet been seconded.

MR. MCLEAN—Mr. President, it seems to me that the bar has, in a measure, overlooked the fact that we have a peculiar provision by which our judges are interchangeable, and the judges from the rural districts going into the cities and doing business, a practical proposition will arise when you come before the legislature adjusting these salaries. It will be a very difficult matter to convince a legislator from a rural district that his judge should go into the city of Seattle and hold court there and receive a smaller salary than the man that sits beside him, and I think that matter, as a practical proposition, ought to be taken into consideration. Another thing, it seems to me, that this matter ought to be pressed most vigorously at this time. On this proposition to raise the salary of the supreme court judges, I do not think the figure is high enough. The period of prosperity through which we have passed and in which we are at this time has convinced the people, in every walk of life, that the expense of living has at least doubled and there is no telling

where it is going. We will probably pass a good many years before we ever find a time when the people, as a body at large, are as willing to take hold of a thing of his kind as they are now, and "now is the accepted time," and everybody in this country has begun to believe that there are going to be three great states in this Union—New York, Pennsylvania and Washington, and we ought to press the fact home that our state is going to be one of the first and we ought to press it right along this line. I think we ought to press the proposition to make the salary of judges ten thousand dollars and we will come nearer getting what we want.

MR. STILES—I sympathize with Judge Grosscup and Judge Parker both, therefore I am going to move as an amendment to the amendment that the proposed salary of supreme judges be six thousand dollars instead of five.

MR. DOVELL—That was the original report.

THE PRESIDENT—The original report, Judge Stiles, is that the judges of the supreme court shall receive six thousand. Judge Parker moves to amend that to the effect that they shall receive five thousand.

MR. STILES—His amendment was that the report be amended so that the salary of supreme judges be six thousand and superior judges four. That amends the whole proposition, as I understand it—five and four. I wish to amend his motion by making it six and four.

The amendment was accepted.

MR. STILES—In behalf of this proposition—we are only talking about it and consulting—we must consider the still further fact in favor of the supreme judge that he is taken out of his home neighborhood where he has lived for a number of years and accumulated a practice. He is now taken away from that neighborhood for six years. The probability is that he will be

re-elected, making it double, and by that time he is entirely estranged from the community in which he lived. In fact, as the history of the judges of the supreme court of this state shows, I think there are but two members of that supreme court who served a term and then left the court, who have gone back to their original places of residence. They have simply given it up. They felt that they could not go back and reinstate themselves as they were before. That is one consideration. Another is that a man who serves six or twelve years is then advanced in life.

Now, so far as superior court judges are concerned, I am very much in favor of this proposition of uniformity. As the last gentleman who spoke said, the superior judges are taken about from place to place, and it is a good thing. I find it a very good thing when a strange judge comes into the county in which I live and tries a case in which I am interested. I am always better satisfied to try any case before a strange judge than before our own, not but that I have confidence in our own judges, but if there is any question of local prejudice or anything of that sort, I feel, when a strange judge comes into the county, that that is all gone. Now, the man is paid for his entire time. That is the theory of it. He is paid for his time and for his labor. He is at the service of the state at all times. Ten months of the year, whether he lives in a large county or a small one, he is subject to draft. If he is not kept busy enough in his own county he is likely to be called to another, and I find there is practically work for all of them all the time. The executive officers of the state, of course, receive different salaries in different counties, but, so far as the judiciary is concerned, thus far they have had a uniform salary and I am satisfied that the sentiment of the people of the state would be strongly in favor of having them continue to be uniform. There is a local pride in it. As the gentleman has said, the people in Stevens county

feel that their judge is entitled to the same pay for the work at home and abroad as the man who lives in King county, and I think, as far as the legislature is concerned, we would get there in better shape with a uniform proposition than with one that makes discrimination.

MR. DOVELL—Mr. President, when a judge is called in to sit in a county where he does not reside, his expenses are paid, so he loses nothing by going to a new county. Let me make a further suggestion that the salaries of all other officers are graduated by our statutes to accord with the size of the counties, and I see no reason why the salary of judges may not be made the same way. I think the report of the committee should be the sense of the meeting.

MR. PRESIDENT—We will now proceed to take a rising vote upon the amendment. The amendment is that all supreme judges receive six thousand dollars per annum and all superior judges receive four thousand dollars per annum. All of those in favor of this amendment will manifest it by rising. Nineteen, the Chair makes it.

All those opposed to the adoption of this amendment, please rise. The Chair makes it eighteen.

The motion now is upon the adoption of the report of the committee as amended.

MR. GROSSCUP—I move now a separation of the question and consideration of the supreme court and superior court separately, voting first as to what the recommendation shall be as to supreme judges and then as to the superior judges.

Motion seconded and carried.

MR. PRESIDENT—The question now reverts to the adoption of the amended report as to the salary of supreme judges, their salary to be six thousand dollars per annum.

Motion carried unanimously.

The question now is upon the adoption of the amended report as to the salary of superior court judges throughout the state being four thousand dollars per annum.

Motion carried.

The motion now is upon the adoption of the report as a whole, the salary of supreme judges being fixed at six thousand and the superior judges at four thousand.

Motion carried.

MR. PRESIDENT—Mr. Condon being now present, we will take up the conclusion of the debate on the report of the Committee on Legal Education and Admission to the Bar. Mr. Condon, as mover of that report, desired to close the debate. Are there any other remarks than Mr. Condon's?

MR. CONDON—Mr. President, there seeming to be no further discussion—we pretty nearly exhausted the subject and ourselves yesterday upon it—it occurs to me that the debate resolved itself yesterday to about this form. The proposition is to require the applicant, before taking the examination in law, to produce either a certificate of graduation from a college of liberal arts or from a four-year high school or, failing those, then to take an examination or then to produce a law student's certificate of general education. The committee suggested that the applicant produce that certificate of general education by examination with either the University of Washington, the Washington State College, or the several Normal Schools. Now, I wish to amend the report, after consulting with the committee present, because that was the phase of the report that drew forth the most opposition, and probably a good deal of it was merited. I wish to amend the report by striking out that portion of the report which says this examination might be held at these several institutions, and leave the examination for general education with the general bar committee, the usual bar committee appointed by the supreme court, and now I wish to address my-

self to this question in the amended form. I think that the main objection is now eliminated by this amendment, and the only question then left, it occurs to me, as far as the discussion went yesterday, is as to whether we should require an educational test. We had a good deal said here yesterday about a man needing nothing but good, horse sense to practice law. That is true, in one sense. It is true if we undersand what we mean by good, horse sense, but this is true, and it is just as true as anything that exists under heaven, that if we are to maintain our position before the community as members of a learned profession we must know something. We must know enough to do what we are to do. What are we to do? In other words, the discussion yesterday resolved itself into a discussion of what law is and what education is. Now, we do not mean by education, book learning. I do mean by education simply a sufficient amount of development so that you can grasp the human relations that we regulate by the law, and by the law I mean nothing more or less than those same relations. Now, what do we need? It takes knowledge of those human relations. This human relationship that you are going to regulate by the law requires nothing but a pure knowledge of economics. Take the question we have in these strikes and lock-outs. The question there is "How shall we regulate the employment?" The employer shuts out the employee; the employee leaves the service of the employer and attempts to prevent other men from entering that service. How can we regulate that relation, as a matter of law, unless we know what that relation is? A man, in order to be a lawyer with reference to that, must know something about the economical relations. If he does not, he could no more make a correct regulation of that than he could make a demonstration of some question in chemistry or physics about which he knows nothing, and if a court attempts to make a regulation of that by some rule that is contrary to human economics

that regulation would no more stand than water will run up hill. I think I am unjustly imposing upon your time to argue any further. It must be apparent to every man, it must be apparent to you men that some general educational test is necessary. Now, whether the test of a four-year high school, or a school the equivalent of a four-year high school—the report does not say that he must have the exact technical knowledge that he gets in a four-year high school, but some educational test ought to be. A man ought to be so far advanced with his general education that in his practice he can take time to develop himself. Abraham Lincoln was suggested to us as a man who had made a success in law without what those gentlemen yesterday said was an education. I deny the truth of that because, although Abraham Lincoln did not have a lot of the ordinary book learning we have today, he was a well educated man. He was a man who, when he found it necessary to know the English grammar, took up English grammar and learned it, and if, in the prosecution of the business either as attorney or as President of the nation, it had become necessary for him to have had a college education, Abraham Lincoln would have had it. Any man who has the ability to make a success in life generally, that Abraham Lincoln had, has ability to get a college education. A college education is now more accessible to a man than the ordinary grammar school education was to Abraham Lincoln. The English language used by Abraham Lincoln was more pure and better, in many respects, than the language used by many a professor of English in our colleges today. So I deny the statement made yesterday that Abraham Lincoln was not an educated man. We have not the simple relation of life that we had a hundred years ago in this country, but, in dealing with the intricate and complicated questions of human relationships that exist today, we have, at times, had to train men to do it. No man could have a conception of the relations of the

neef trust who did not have a good, competent education—college education, and the two men who successfully grappled with the problem for Theodore Roosevelt were both college-educated men and they could not have done it if they had not been. Theodore Roosevelt stands as the exemplar and is the evidence that I offer you today why we should have a knowledge of these things as lawyers, and I think that there should be no hesitancy on the part of this Association in committing itself at this time to the policy of demanding of applicants for admission to the bar at least a high school education.

THE PRESIDENT—The motion yesterday was that the report of the Committee on Legal Education and Admission to the Bar be accepted and adopted. An amendment to that was that the report of the committee be accepted and placed on file. The question is first upon the amendment, that the report of the committee be accepted and placed on file.

MR. ROCKWELL—Do I understand that that part is cut out now that requires a certificate from the University, the State College or Normal Schools?

MR. CONDON—Yes, sir, we now amend the report by changing it to the bar committee appointed by the supreme court.

MR. BELL—Then, do I understand that it makes no reference to the amount of knowledge a man must have in regard to classics, but entirely leaves it to the supreme court or the examining board?

MR. CONDON—An equivalent of four years of high school, according to the best high schools in the state, is the amendment.

MR. BROWN—I wish to ask now what the amendment is we are voting on.

THE PRESIDENT—That the report be accepted and placed on file.

MR. BROWN—I will then ask that the report be read as it would now be placed on file.

THE PRESIDENT—Is the report ready for reading? It is the particular language of the report, just that part, which will be read.

MR. CONDON—The Secretary tells me it is down to the newspaper office. I can state it accurately, I believe, though. That the general educational test shall be that every applicant for admission to the bar upon examination shall produce a certificate of graduation from a college of liberal arts or a four-year high school or, second, in the absence of those, then he must produce this law student's certificate of general education, which can be obtained by examination before the examining committee of the supreme court. That is the way it will read as amended.

MR. BELL—Mr. President, I would move an amendment to this report, that the test of general knowledge should be left entirely to the examining board.

Seconded by Mr. Rockwell.

JUDGE BLACK—Let me call attention to the way it is put. It says a high school course or something that is its equivalent, and the gentleman has practically announced what that means. He says the kind of education that Abraham Lincoln had, and I think that meets the approval of most every man, and, as I said yesterday, if every member of the bar had that rough-and-ready knowledge that Abraham Lincoln had, I think that is all sufficient. That leaves a wide latitude.

MR. CONDON—I do not accept that interpretation of what I said, Mr. President. I did not mean to say that. I mean to stand on the language of the report.

JUDGE BLACK—I understand, then, that a man wants something better than Abraham Lincoln had.

MR. CONDON—Oh, no, none of us wants more than that, but I want the equivalent education of a four-year high school. That

is the language of the report. Abraham Lincoln had that, and better.

MR. ROCKWELL—Mr. President, I heard some part of the discussion yesterday, and I want to make clear my idea of the matter. I am opposed to this idea of the equivalent of a high school education or any other education. I agree with the amendment proposed by Mr. Bell, that this whole matter should be left to the discretion of the committee that examines the applicant for the bar. Now, they are supposed to be qualified to examine that man on his legal learning, on his qualifications as a lawyer, and, if they are qualified to do that, they are certainly qualified to go further and say whether he is possessed of sufficient general education to be a practicing lawyer, and, if that is the idea, I am in favor of it but to put in there an equivalent of a four-year high school course, or a three-year high school course, or any other high school course or any college course, I am opposed to it. I want it left to this committee as to his legal learning and as to his general learning.

MR. HUESTON—Mr. President, I submit this, that Mr. Troy stated yesterday that he had changed his view of this subject while acting as an examiner duly appointed for the last two years. I am suspicious that the change proposed will practically remove all the purpose that the committee has in its report and resolve it back to the condition of things that now exists. In other words, unless there is some standard that that committee can hold up to and put their finger on the law justifying it, they are practically going to be compelled to say that every applicant has the necessary general educational qualifications, and I would just like, for the purpose of drawing the line down here, to ask Mr. Troy and Mr. Condon their opinion on that question, whether or not removing all standards will not practically defeat the proposition.

JUDGE JOINER—This matter was put over yesterday for the purpose of giving Professor Condon an opportunity to close this debate. He has made his speech, and, in all fairness to Professor Condon, I think the debate ought to close and that the question ought to be put to the house. I move the previous question.

Duly seconded.

THE PRESIDENT—The previous question is moved and seconded and not debatable.

Carried.

THE PRESIDENT—The question is now upon the amendment to the original report, being the amendment proposed by Mr. Bell to the effect that an applicant for admission to the bar shall produce before the examining committee a certificate of graduation from some college or from some high school, or, in the absence of such certificate, shall pass such an examination as to educational qualifications as the committee may prescribe—just such as the committee may prescribe.

Upon rising vote taken the amendment is declared lost.

THE PRESIDENT—The question is now upon the amendment to simply accept the report and place it on file.

Amendment lost.

THE PRESIDENT—We will now revert to the original proposition that the report of the committee be adopted.

Motion carried and report adopted.

THE PRESIDENT—We will now listen to a paper by the Hon. J. B. Bridges on Log Booms on Navigable Rivers. (See Appendix.)

THE PRESIDENT—Discussion of this paper is now in order.

MR. BELL—Mr. President, I want to say that I heartily agree with this learned paper in every respect except one. I think, in one respect, the learned gentleman has gone just a little

too far, and that is in passing a law that would prohibit the bringing of a damage suit. I think it is all right in reference to enjoining the logging company, but I think they should only go so far as to compel them to pay actual damages for any injury done along the bank of the stream. I believe the poor man who goes out on the bank of a stream and clears up his land should not have that cleared land torn away by law, which could be protected by reasonable care, as the learned paper states, but I think the only way to compel the logger to use reasonable care would be to give the riparian owner a right to sue him in damages if he did not use this reasonable care. To illustrate, say a man is driving down a stream and there is a point in that stream. A log will strike against that bank and tear away the earth, and by constant recurrence he might lose, say, an acre of ground. In the exercise of reasonable care the logger can throw a boom around that point and actually protect the bank. Now, if he fails to do that the question as to whether he used reasonable care or not might be a question of evidence. If he had a right to bring a suit for damages, then whether he used reasonable care or not could be shown. If he has that right, then I say use the stream with all the freedom that loggers can use it, but use it with that care that a logger can, in most instances, exercise to protect the bank and protect the riparian owner, and not seriously interfere with his own business. With that exception I heartily agree with the paper.

MR. TROY—Mr. President, I heartily concur in practically everything that has been said in this paper. I do not believe that I can quite agree with my brother in the suggestion that he makes in regard to building sheer booms and protecting the bank along the stream so that no possible damage could occur. If I remember right, the supreme courts of Michigan and Wisconsin have said that if such were required of a driver using the stream, who has an equal right to use the stream with he

riparian owner, it would amount to a denial of the use of the stream, although I believe, Mr. President, that boom companies and loggers driving rivers should be held to a degree of reasonable care, at least, or perhaps more. There is, at least, Mr. President, a crying need of reform in this state. For instance, a logger may own a tract of timber on a stream, we will say, thirty miles in length. There are riparian owners between him and tide water where he wants to take his logs. Each of those riparian owners, under the conditions that exist in this state, have a right to refuse to permit the use of the banks of the stream along the river, even to the extent, as I understand the rule as applied in this state, of refusing even permission to walk along the bank of the stream in order that he may drive his logs. Now, it has been contended and is suggested that the owner of the timber has his remedy because, under the law of eminent domain, he has a right to condemn the banks of the stream for his use, but, Mr. President, that is not a sufficient answer. If the owner of this comparatively small tract of timber must condemn the banks of the river for the whole length, it amounts to a denial of his right to use the river for transporting his product to tide water and market, and, as has been stated by the supreme courts of the great lumber states of Wisconsin and Michigan, it amounts to a denial of that other principle of law that is quite as well enunciated, viz., that the water of a navigable stream, floatable stream, is as much the property of the logger who desires to transport his product as it is the property of the riparian owner. In some way, Mr. President, it seems there is necessity for reform in this respect.

THE PRESIDENT—Are there any other remarks?

THE PRESIDENT—The Chair will appoint upon the committee to make known to the legislature the decision of this Association with reference to the salaries of supreme court and superior court judges, Judge M. J. Gordon of Spokane, and Judge W. T. Dovell of Seattle.

MR. ROBERTS — Mr. President, at the last session of the Association a Committee on Nominations was appointed. I find there are but two members present, and I have a letter from Mr. Bruce saying it will be impossible for him to be present. Since there are only two of us present I think it would hardly be proper for us to act, and I therefore move that the Chair, before the adjournment of this session, appoint members to fill the committee.

Motion seconded. Carried.

THE PRESIDENT—The Chair will state that the duties of that committee are to choose a place of meeting for next year and to nominate a Vice President for election by the Association. Mr. Roberts, Mr. Hudson and Mr. Coleman, of that committee, are present and that leaves two to be appointed. The Chair will appoint, in place of Mr. S. M. Bruce and Mr. W. B. Stratton, Mr. M. F. Gose of Pomeroy, and, in the absence of Mr. E. C. Hughes, the present First Vice President, who ought to go on that committee, the Chair will appoint his partner, Mr. W. T. Dovell of Seattle, as this committee will have to decide whether its next meeting shall be held at Seattle or elsewhere, and, in place of Mr. Stratton, the Chair will appoint the Second Vice President, Mr. R. S. Holt of Tacoma.

THE PRESIDENT—We will now listen to a paper on Maritime Law, by General James M. Ashton of Tacoma.

MR. ASHTON—Mr. President and brethren of the bar: The day is getting pretty well advanced, and those of you who have not made a study of maritime law may, perhaps find this effort of mine somewhat dry and uninteresting. If so, I can only ask you to bear with me, because I attempt to cover an entirely unexplored realm of admiralty law, viz., the chronological range of the history of that branch of our jurisprudence, so that we will have some idea why our maritime laws exist as they do at the present day.

The paper is read. (See Appendix.)

THE PRESIDENT—Discussion of the paper just read is now in order.

THE PRESIDENT—Is the Convention of Prosecuting Attorneys ready to present a report to the Association?

MR. RUMMENS—Yes, sir, we are ready.

THE PRESIDENT—The Association will be glad to listen to the report of the Convention of Prosecuting Attorneys. (See Appendix.)

THE PRESIDENT—You have heard, gentlemen, the report of the Convention of Prosecuting Attorneys. What is the pleasure of this Association with relation thereto?

JUDGE RICE—Mr. President, I simply rise to ask this question. This Convention of Prosecuting Attorneys makes a recommendation with reference to submitting to the jury, where insanity is pleaded as a defense to the crime of murder in the first degree, the question of whether or not the verdict of not guilty is rendered upon the ground that the party is insane—by reason of insanity. I would like to inquire what defect, if any, they found in the present statute upon that precise question that caused them to make that recommendation, and if they consider the present law defective in any way.

THE SECRETARY—It says “may” and they say “shall.”

MR. RICE—I didn’t understand that. There is a statute upon that now, but it may not be obligatory upon the judge to submit that question.

MR. RUMMENS—The purpose of this proposed legislation is that, when a man charged with murder in the first degree shall have been acquitted and the jury shall find that it is by reason of insanity, that this man shall not longer be out upon society and shall be placed in some place that the legislature shall provide for this class of men, and, while we do not know whether

that should be the penitentiary or the asylum, we wish to leave it to the legislature to pass upon that and determine where he should go. The present law does not indicate, and although some courts hold that the superior court should send him to the insane asylum other courts do not. They take the position that he might have been insane at the time the crime was committed and not be insane at the present time. Then, too, there is an objection to sending them to the insane asylum because, in a great many instances, it is within common knowledge that these people who are acquitted by reason of insanity, their insanity does not last much longer than the time the jury is in, and it is the intention to mete out some punishment to this class of people and that they will not be turned out upon society within one week.

MR. GORDON—Mr. President, I am opposed to that part of the recommendation of the committee. It seems to me that the effect of that is simply to say that no plea of insanity is good unless it is permanent. It would cut out, for instance, insane impulse which has, for a long time, been recognized as a condition that may exist that excuses the act in law. It would cut out a defense that is now recognized and that science recognizes as, of itself, an independent condition. It seems to me that that is not, at best, scientific. It seems to me that it disputes what science has established and, without some provision coupled with this proposed amendment in the way of legislation providing for an examination or means of examination as to the present status or mental condition of the defendant, it seems to me it would be essentially wrong to engraft any such provision upon our code of criminal procedure, and unless we are prepared to say that there is no such thing as insane impulse or emotional insanity, this ought not to be adopted, and to say that there is not is disputing science.

MR. STILES—There is so much in this that I could not possibly vote upon it intelligently. I therefore move that this report be referred to the Committee on Legislation, to make a special report at our next meeting.

The motion received a second.

THE PRESIDENT—It is moved and seconded that this report be referred to our Committee on Legislation to consider and to make a special report to our Association at the next meeting.

MR. SMITH—Mr. President, the trouble with that is that many of these things could be easily taken care of. Many of them are of pressing importance and are specific omissions, specific defects in the law. It seems to me too bad to push this whole thing over two years. Isn't it practicable to appoint a committee large enough to consider this matter and with moderate power, at least, to act? In other words, those matters that can readily be determined and upon which the committee can readily agree, a committee, for instance, of seven, including two or three prosecuting attorneys, with power to act at the next legislature; and then those matters upon which the committee cannot agree can go over as Judge Stiles has suggested, and not push it all over two years.

MR. STILES—As to those matters that are simple and obvious, it would not be necessary that the action of this body be had before the legislature acted upon it. Now those matters, such as amending title and the like of that, why, all the body of prosecuting attorneys has to do is to go to the legislature and present them. As to the additions to our penal provisions, and such things as that, there are several amendments there I would want to think about a good deal.

MR. BATES—Mr. President, the prosecuting attorneys assembled have made this recommendation to the Bar Association of this state and have made it in good faith, with the idea that

this Bar Association would pass upon it. Many of those matters have been referred to from time to time in the reports of the prosecuting attorneys to the Governor and have been laid before, probably, the legislature. There is nothing in this report but what we have thought important to be referred to the legislature. Now, I do not agree with Judge Stiles that the legislature pays no attention to any recommendation made by this body, because I think they do. If it is true, as he says, that they pay no attention to it, it certainly cannot hurt anybody at least for this organization to pass upon the recommendations made by the prosecuting attorneys of this state, and it does not seem to me that it is right, after the prosecuting attorneys from all over the state have been called to meet her in a body and recommend matters which they thought were of importance to the state, to then say that those shall be passed over for two years. It does not seem to me that that is fair to the prosecuting attorneys of the state. As I said in the start, these matters which we have referred to you are matters which we consider of importance, and they are of importance, and we ask that this body take action upon the recommendations we have made. Many of them, as the people in some of the larger cities know, are of vital importance to the people living in those cities. Many of them are of more vital importance to the smaller towns, but we ask that this body take these resolutions up, and if they want to take them up one by one, very well, but take them up; don't pass them over for two years, because we have acted in good faith and made our recommendations to this organization and have asked you to pass upon them.

JUDGE BLACK—Mr. President, it strikes me that this report is probably the most practical report that has been made to this body during the session, and nearly every one of the things that have been spoken of as needing attention have evidently been encountered by the prosecuting attorneys in the discharge of

their duties. I know that nearly every one of them have been called to my attention, and I can see no reason why, after the prosecuting attorneys have met together and recommended legislation, every bit of which it seems to me is vital and important and necessary, now — why a matter of practical importance should be postponed for two years while the ideal things are discussed and settled by the Bar Association. Now, one thing that strikes me with a good deal of force is that insanity question. Under the present law practically there is no provision made—practically, I say, there is none. Now, one of the speakers said that this was to cut out the defense of insanity. As I understand it, it does not propose to cut out a defense of insanity. It proposes, perhaps, to prevent the defense of insanity when there is no real defense. I think that a sane murderer is a safer man at large than a really insane man with homicidal intent and impulses, even if they are temporary. A man who is temporarily insane, a man who has really an insane impulse which compels him or which induced him to kill a man last week, would very probably have the very same impulse, because he has that tendency, next week, and he is a much more dangerous man to society than the sane man who kills his man for some real grievance; that is, that the man who has a real, absolute grievance and kills his man is a better man at large than a man who kills his man on an imaginary grievance or for no real ground. Now then, if men are insane only for the purposes of defense, that ought to be cut out. If it is only intended to have an insanity plea for the purpose of enabling shrewd and ingenious lawyers to defeat justice, that ought to be cut out. If a man is really insane he ought not to be sent to the penitentiary and he ought not to be sent to an insane asylum, but he ought to be sent to some institution prepared for that man. The object of the criminal law is sometimes regarded as vengeance. Man has no right to mete out vengeance

in this world, because he has not the proper knowledge to do it well. The meting out of vengeance should be left to that Supreme One who has all knowledge and therefore can act justly. Man has only the right to mete out this so-called punishment for the protection of society, and who can say that a man with insane impulses that drives him, through imaginary causes, to kill his fellowman, is a safe man at large?

JUDGE ROOT—Mr. President, there is no question but what there are a number of propositions involved in this report that this Association will not have time to adequately consider. This one subject that has just been referred to is one we might discuss for hours, I think, to great profit because, in my opinion, it is a very live question just now, and I wish we might give expression to something that would put the condition of affairs in our state in better shape. There are other important matters that I would not like to vote upon without hearing a full discussion and having time to think about them, and I do not think that, practically, we can consider the different items of this report advantageously at this time; there are probably some that we might. But, in deference to the meeting of the prosecuting attorneys of the state, I think some consideration should be given some of these items, and I would take leave to move, as an amendment to the motion, that, instead of being referred to a committee with direction to report two years from now, that it be referred directly to a committee at this time with instructions to report tomorrow morning with reference to those items as to which they feel the Association can do justice at this time, and with reference to such other items as they think cannot now be properly considered.

The motion received a second.

MR. WYNNE—It seems to me unless some action is taken by the Bar Association practically the entire work of the Convention of Prosecuting Attorneys will be nullified. We were asked

by the Secretary of this Association to get together and have our annual meeting at the same time and, while no definite plan was announced, yet it seemed to be the proper thing for us to do to make the recommendations which we thought proper with the idea that they would be discussed, perhaps, by the Bar Association, and, if the recommendations were thought to be proper, that that would be verified by some action of the Bar Association, and, unless something is done at this time, it would practically nullify the action of the Association, many members of which, perhaps, or some members of which, perhaps, will not be members next time on account of the changes of election, and practically our work will not amount to anything.

MR. GORDON—Mr. President, the hour is late and I regret very much the idea of delay, but I believe the reputation of this Association, in a measure, is brought into this and the only apology I have is that this is such an innovation that it challenges at once discussion and debate. I do not think there is a state in this Union today but what recognizes, as medical science has for half a century recognized, that a man may be insane today and perfectly sane tomorrow. In other words, insane impulse and emotional insanity are established today. Science has established its existence.

“Star-eyed Science, hast thou wandered there
To bring back thence a giant of despair?”

Now, granting everything that Judge Black has said. It may be that this is a defense that is much abused. Well, so is the presumption of innocence, as compared to the average criminal case, but the law proceedeth not hastily but with regard to the welfare of all the people has adopted the principle that it is better that ninety-nine guilty men should escape than that one innocent man should be punished. Take it in times of excitement; take it when the atmosphere of the criminal court, as that

surrounding a defendant, is one that all the thought of time and experience has hedged about one in that position, and there is much injustice being done. It may be in nine cases out of ten the defense of insane impulse in homicide cases is successfully and wrongfully maintained, but what are you going to do with the tenth man? We must either admit that science is wrong or else be prepared to say that in every case you must confine a perfectly sane man for a crime for the commission of which he was mentally irresponsible. Is this Association prepared to go that far? As Judge Root has said, it is a topic that affords a wide range of discussion and it is not to be acted upon hastily, and no man will vote on this today without knowing, or he ought to know, that science has recognized that there are such conditions as temporary or emotional insanity or insane impulse acting under which a man may do an act today for which he is absolutely irresponsible yet next week be perfectly responsible.

MR. STILES—I move that this be made a special order for tomorrow morning at nine o'clock.

THE PRESIDENT—That motion is hardly in order.

MR. BELL—I second the motion of Judge Root.

MR. HUDSON—Mr. President, I was not in when the report was read. I simply wanted to say that there was one thing which I hoped this Association would recommend and that is that a law be passed by the next legislature giving a prosecuting attorney power to summon witnesses and compel their attendance and take their evidence. It is included in the report and I hope this Association will endorse it.

MR. STILES—I would like, if my second consents, to submit Judge Root's motion for mine.

THE PRESIDENT—The motion now is that a committee of seven, did you say, Judge Root?

JUDGE ROOT—I did not mention the number. My idea was that it go to the standing committee on legislative matters and, if they are not all present, I would suggest that the President fill up that committee at this time, and that the report be referred to the Legislative Committee with instructions to report tomorrow morning upon all items that they think the Association can deal with at this time, with such recommendations as they see fit to make concerning the others.

Motion seconded.

MR. BATES—I do not think it is fair to refer this report to the Legislative Committee without the prosecuting attorneys who are here have something to say about it.

THE PRESIDENT—The motion is that the Chair will fill out this committee. There are only two of that committee here and it was suggested that members of the prosecuting attorneys' convention be added to the committee.

MR. GROSSCUP—I think this whole matter could be solved right now, and in this manner, that the report of the Prosecuting Attorneys' Convention be approved with the exception of the item relative to conviction in cases of murder where the defense is insanity and that item with reference to allowing the jury to fix the punishment and that those two matters be referred to the Legislative Committee to be reported on at the next convention. I make that as a motion.

The motion received a second.

THE PRESIDENT—It is moved, as a substitute to the original motion, that the report of the Convention of Prosecuting Attorneys be adopted by this Association with the exception of the last clause, I think it is, that portion of the report in relation to insanity in murder cases and that the jury may fix the punishment of a person convicted of murder in the first degree, and

that those matters be referred to the Legislative Committee for report at the next session.

The motion carried.

THE PRESIDENT—Is the Committee on Judicial Administration and Remedial Procedure ready to report?

Adjournment was here taken until 8:30 o'clock p. m.

EVENING SESSION.

THE PRESIDENT—The meeting will come to order. The Chair is in receipt of a telegram from Governor Mead as follows:

"I regret exceedingly my inability to attend the Bar Association and excursion. Please convey to the Association my congratulations on a successful gathering. Albert E. Mead, Governor."

Is the Committee on Judicial Administration and Remedial Procedure ready to report?

MR. MCLEAN—Mr. President and gentlemen of the Bar Association: Mr. Will G. Graves, of Spokane, the chairman of this committee, sent the report to me and asked me to present it for him and I will read it. I will say that this report was prepared by the chairman. I do not think the committee ever met or that any two of them ever met, but it was prepared by the chairman and sent around to the various members of the committee, and is reported by them.

THE SECRETARY—I think Mr. Post and Mr. Graves had some conference. They both live in Spokane.

MR. MCLEAN—Well, it may be.

REPORT OF COMMITTEE ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

Washington State Bar Association:

Gentlemen—Your Committee on Judicial Administration and Remedial Procedure beg leave to make the following recommendations as to amendments of our existing laws relative to practice and procedure in the courts:

First. We recommend that provision be made that the jury shall in all instances be charged in writing. That at the conclusion of the evidence the charges to be given shall be determined upon and, at the request of counsel, they shall be permitted to present to the court arguments in support of requested charges. That before the cause is argued to the jury the trial judge shall charge it, and respective counsel in their arguments shall have the right to refer to the charges given and discuss them in connection with the facts. The jury shall take the charges with them when they retire to consider of their verdict.

Second. We recommend that provision be made that the appellant, at the time of filing his statement of facts, or if no statement of facts shall be filed, at the time of giving notice of appeal, shall file an assignment of errors pointing out specifically the errors upon which he intends to rely, and no errors shall be considered except those so pointed out. No general specification of error shall be sufficient, e. g., an assignment of error that a new trial was denied will present nothing for review unless the particular error relied upon for cause for a new trial be clearly pointed out.

Third. We recommend that the appellate court shall be deprived of the power to review the verdict of a jury or the findings of a trial court on any question upon which there is conflicting evidence.

Fourth. We recommend that upon appeal from the final judgment in an eminent domain proceeding any and all errors claimed to have occurred at any stage of the proceeding, whether going to the right of taking or to the trial of the question of damages, or any other error claimed to have occurred in the proceedings, may be reviewed, provided proper assignments of error shall have been taken.

Fifth. We recommend that wherever application shall be made to the supreme court for orders to effectuate an appeal, that the cause shall be docketed in the supreme court under the title of the principal action and that all proceedings thereafter taken in the cause shall be docketed under that title. This is not intended, of course, to do away with the necessity of notice to the trial court or judge, nor to do away with the necessity of process running to the court or judge, but is merely to

obviate the necessity of commencing several independent proceedings in what is essentially one cause, and the paying of several fees therefor.

Sixth. While it may perhaps be somewhat beyond the scope of this report we would suggest that the matter of the preparation of proposed legislation in such form that it may be presented to the legislature for adoption and the taking of some action to secure the adoption of such legislation are matters which should be considered by the Association. In the past, the recommendations of the committee seem to have been received and approved or rejected by the Association, and that is the end of the recommendation. Respectfully submitted,

WILL G. GRAVES.

I approve the above except the *third* paragraph.

F. T. POST.

I approve of the above except the third paragraph, and I hesitate to endorse that for the reason that where a verdict is superinduced, or in any measure is the result of passion and prejudice, there could be no relief, if this recommendation became the law.

C. S. REINHART.

Washington State Bar Association:

Gentlemen—The undersigned, a member of the Committee on Judicial Administration and Remedial Procedure, begs leave to report as follows:

I concur in all the recommendations made in the principal report, signed by Mr. Graves as chairman, except the third recommendation, to which I cannot give my concurrence, for the reason that I do not deem it advisable to absolutely preclude the supreme court from reviewing any question of fact where there is conflicting evidence.

Respectfully submitted.

H. A. P. MYERS.

I concur in the recommendations of the chairman of the committee with the exceptions stated by Mr. Myers for the reasons stated by him.

HENRY MCLEAN.

MR. MCLEAN—I have a letter here from Mr. Graves in which he asks me to present this, and I will read that part of it which relates to part of the report:

“With respect to this third paragraph, I may say that I intended no more than that which Mr. Reinhart is willing to concur in, viz., that the power of the court to set aside a verdict

induced by passion or prejudice should remain unaffected. What I intended to accomplish, was to place the findings of a trial judge upon the same plane as the verdict of a jury, and to put it beyond the power of one judge of the appellate court to review upon a written record the findings of another judge made upon the spoken words. I think the other recommendations are self-explanatory."

THE PRESIDENT—Discussion of the report of this committee is now in order.

THE SECRETARY—Mr. President, in order to facilitate matters, I would move the consideration of the report by sections.

The motion received a second. Motion carried.

THE PRESIDENT—The Secretary will read the first section. Section read.

MR. HUDSON—Mr. President, that recommendation was made by the Bar Association at the last meeting in Seattle and I happened to be the chairman of the committee that was recommended to prepare bills in accordance with the recommendation, and a bill was prepared, and I went to Olympia and placed it in the hands of a representative down there and sought to get it passed, but it died, like many other good bills, without ever seeing daylight. I want to say, however, as one who has had experience under that practice, that, in my judgment, it is a very desirable thing to do to have a law of that kind, settling the instructions before the argument, so that the attorneys know just what law will be given. They can address themselves to the law as given by the court. The jury can take out the instructions with them and see what the law is. It is very much more satisfactory and reaches better results, and I would move the adoption of that recommendation.

The motion received a second.

Upon a rising vote, the recommendation was adopted.

THE PRESIDENT—The Secretary will read the second section of the report.

Section read.

THE PRESIDENT—What is the wish of the Association with respect to this section?

MR. (C. B.) GRAVES—I move the adoption of that, Mr. Chairman. Isn't that the law, Mr. President?

THE PRESIDENT—It is out of order to ask the President what the law is now. That is the only parliamentary ruling I have been sure of today.

The motion received a second.

MR. PARKER—Now, Mr. President, I am absolutely opposed to this. Our practice in the supreme court, in the manner of preserving the record, exceptions, etc., has gone through a stage of evolution lasting fifteen years and I do not want to commence over again and go through another one. Now, we ought to have learned by this time—I mean the lawyers, at least, ought to have learned that it is of very little consequence what your practice is or what is the manner of doing this or that particular thing, but it is of tremendous consequence that we know how to do it and that is a thousand times more consequence than whether you do it this way or that way. You could discuss the question pro and con, for instance, as to whether it would be better to have a summons issued by the clerk of court or signed by the attorney and waste time on that when it wouldn't make any difference which way it was, or practically no difference, but it is of great consequence to know how to do things, and here we are entering upon a field that is fruitful of more trouble, by reason of its uncertainties, than can be overbalanced by any enactment. It is fairly easy to get into the supreme court now and stay there and have your case determined upon the merits, and have it determined rightly. We have found

that out after laboring for some fifteen years, and I do not care about undertaking to study law, especially the law of procedure, again and fill up the court reports with some more material composed largely of mere matters of practice. Not that this would necessarily be any better or any worse than the system we have. I think it would not be so good, but even if it was better I would be absolutely against it. I am for stability in practice, if nothing else.

The motion failing to carry, the section was not adopted.

THE PRESIDENT—Now, read the third section, Mr. Secretary, from which there is a dissenting opinion filed.

MR. ROBERTS—It has been read twice, and I move that the dissenting opinions be approved.

The motion received a second, and carried.

THE PRESIDENT—The Secretary will read the fourth section of the report.

Section read.

It is moved and seconded that this section of the report be adopted.

MR. STILES—It is evident that the last phrase was put there anticipating that the second section would be adopted. Now that the second section has been dropped, "provided that proper assignments of error shall have been taken," ought not to be in there. Therefore I move to amend by suggesting that it be adopted with the last phrase left off, "provided proper assignments of error shall have been taken." That means "provided proper assignments of error shall have been taken" at the time of filing the statement of facts.

MR. HUDSON—I suppose the idea is this: There is no appeal from the right to condemn. There was an act passed which was declared unconstitutional by reason of some defect in the title of the act, and there is now no appeal from that question

of the right to condemn and that is intended to provide an appeal from that, so that the question can come up on appeal from a verdict of a jury. That is what I understand by that, and that is what I suppose that is intended to cover.

MR. HOLT—I am opposed to that for this reason: There is a provision in the statute at the present time, as I remember it, that upon the rendition of the verdict of a jury, the party proceeding to condemn may deposit the money in court and that the appeal shall not delay the progress of the work. There is also a provision that the question whether the use is a public use is a judicial question and shall be determined by the judge in the first instance. Yet Mr. Hudson says there is no appeal at the present time from that question. If this remedy giving the right to bring up that question on appeal from a final judgment is adopted, it is very questionable whether that will not take away from the defendant the right to bring before the court, by certiorari, the propriety and the soundness of the judgment of the court on the preliminary question. If it would, it should not be adopted. If it would not, I do not see that there would be any objection to it. I am not prepared to say, at this moment, whether the supreme court has decided that the right to resort to a writ of certiorari exists because there is no appeal as the law now stands, or whether it was put upon the additional ground that an appeal would not be an effectual remedy, but I believe that that law would, in effect, give a right of appeal from the preliminary judgment of the court, and if, pending the proceeding, the party proceeding to condemn were permitted to go on with the work an injustice would result, and the landowner might be compelled to wait and permit the improvement to proceed while he could only have the rulings of the court reviewed at some later day. I think it would have that effect.

THE PRESIDENT—The Chair did not hear a second to Judge Stiles' amendment that the concluding clause should be stricter.

The amendment is duly seconded, put and carried. The motion is now upon the adoption of the section as amended. The motion is lost.

THE PRESIDENT—Is there a concluding paragraph?

The fifth section of the report is ready by the Secretary.

THE PRESIDENT—What is the pleasure of the Association with reference to this section?

THE SECRETARY—I move its adoption.

Motion received a second.

THE PRESIDENT—Are there any remarks?

MR. ROBERTS—Mr. President, I seconded it in order to get it before the house, but I am not certain that I know what it means and I am afraid to ask since I note the experience of some others here. I think some lawyer ought to respond.

JUDGE WHITSON—Mr. President, I think I understand what the committee is driving at in that, anyhow. The supreme court recently held that a garnishment proceeding in an action was in the nature of a separate action, and it is for the purpose of consolidating the whole matter in one proceeding. I think that is what the object of this whole section is.

THE SECRETARY—Mr. President, for several years I know that Mr. Reinhart, the clerk of the supreme court, has talked over this matter with a view of simplifying the records in his office. Under the present system applications to the supreme court for writs of review are not styled nor docketed in the name of the real parties. It may be *Smith v. Jones* in the lower court, and on appeal it has the same title, but if it is an interlocutory matter, an application to compel the trial court to fix a supersedeas or settle a statement of facts, or other applications in aid of the appellate jurisdiction; it is docketed in the supreme court

as *State ex rel. v. Superior Court*. If it is Smith's application, Jones resists it and it is Smith against Jones just the same. Why not docket it that way? That is the object of this recommendation as I understand it.

THE PRESIDENT—That is, to abolish the *State ex rel.* Jones against the superior judge?

THE SECRETARY—Yes, sir.

MR. GRAVES—That is, to have it docketed in the main case, so as to avoid having several cases.

The section is adopted.

The Secretary reads section six of the report.

MR. BRIDGES—I move its adoption.

The motion received a second, was put and carried.

THE SECRETARY—That is all of the recommendations.

THE PRESIDENT—Is the Judiciary Committee ready to report?

THE SECRETARY—Mr. President, that was included in the report of the Committee on Legislation.

THE PRESIDENT—Is the Committee on Publications ready to report?

REPORT OF COMMITTEE ON PUBLICATIONS.

MR. MIREs—Mr. President, the active member of that committee has disappeared. Mr. Remington had a report that he wanted to make, but I do not know where he is this evening. I did not know that he was a drinking man, but perhaps he is. I have no report to make. Mr. Wooten, of Seattle, had some complaint to make about our publication of our last meeting of the Association, at Spokane. Mr. Remington called my attention to the fact that one of the papers read at that meeting has not been published. Now, whose fault that is I do not know.

As a matter of fact, that paper became the property of this Association the minute it was read and the party had no business to get it back again. If the Secretary gave it to him voluntarily, he is to blame. If he took it away from him, maybe he is not to blame.

THE SECRETARY—Guilty.

MR. MIRES—The paper has never been printed. It might have been cut out, as some other parts of the report were cut out before, but the gentleman from Tacoma here (Mr. Snell), a member of this committee, called my attention to it and wanted it called to the attention of this meeting. That is the only reason why I appear here. The report suits me about as well as any of them.

THE PRESIDENT—A motion to prosecute for petit larceny or contempt might be in order.

THE PRESIDENT—Is the report of the Committee on Grievances ready, or is that the report, also, of the Committee on Grievances?

MR. MIRES—I was not appointed on that committee, but I can report, if the Association desires to hear it.

THE PRESIDENT—Is there any unfinished business? Is there any new business? Under the head of new business will come up the matter of increasing the membership of this Association. I understand Mr. Roberts has a motion.

MR. ROBERTS—I have an amendment to offer, Mr. President. I will hand it to the Secretary.

The Secretary reads proposed amendment to section 7 of the by-laws.

Be it resolved that section 7 of the by-laws be amended to read as follows:

SECTION 7. The fee for admission to membership in this Association shall be three dollars, which shall includes the dues

for the remainder of that calendar year. The annual dues shall be two dollars per year, and no person shall be considered an active member unless such dues are paid. Any member who shall be in arrears in the payment of dues for more than one year may be reinstated to active membership upon the payment of three dollars, which reinstatement shall date from the beginning of the year in which such payment is made.

MR. ROBERTS—I move the adoption of this amendment to that section, Mr. President, and I would like to have the Secretary state the purpose of the amendment as it is a matter that is to be brought to the attention of the Association by the Secretary and a matter with which he is thoroughly familiar.

THE PRESIDENT—It might be proper for the Chair to state that the executive officers of the Association during the past year, as in several years past, have had under discussion the method of increasing the interest of the bar of the state at large in the work of the Association. There are, at present, two hundred and sixty-two members, only, of the Association. No accurate record of all the lawyers of the state has been taken to our knowledge, but judging from the roll of the supreme court of this state, there must be something like twenty-five hundred or three thousand lawyers in this state. It is probable, therefore, that less than ten per cent of the members of the bar of the state are members of this Association. Now, the annual expense of carrying on the work of this Association is approximately four hundred dollars, the larger part of which is spent in the publication of the annual proceedings of the Association, the discussions and the papers that are read. If we had dues much smaller than now control, perhaps even as low as one dollar a year, and a lower initiation fee, it might be possible to have a much larger membership and then raise enough money to carry on the work of the Association. The Executive Committee this year hardly felt authorized to take any active step

in the matter without first bringing it before the Association. A procedure somewhat like this was discussed: By circular or writing to every lawyer in the state, as shown upon the roll of the supreme court, asking him to contribute a dollar a year, and perhaps an initiation fee of two dollars, or three dollars, as the committee finally recommend as embodied in this report of this motion, it is possible that a larger membership might be obtained and the interest of the Association thus kept up. As a matter of fact, for the last four years the loss of members through death and their dropping out from non-payment of dues and removal from the state and other causes, has been greater than the new members taken in. This year we are five members behind the total, and last year about that proportion, so that for the last three or four years, this Association has really been growing smaller instead of larger, and if we keep up the work of the Association, it is necessary that some radical step be taken by which to remedy this evil. We would be glad to hear from the Association on this point so that the new executive officers might feel authorized to take such steps, either as directed by the Association or as to them shall seem best, to increase the membership in the future.

MR. McLEAN—Mr. President, I will offer one suggestion. It seems to me, in a country like ours, where we have so much new scenery, that we could find some summer resort somewhere, like Lake Chelan, or some place else, and fix the place of meeting of this Bar Association where it would attract the attention of the bar of the state and make it a kind of outing and separate it from business and other interests, concentrate the whole force of the bar on the Bar Association meeting, that in a few years of active, aggressive work we would find this Bar Association a very much changed institution, and I believe that something of that kind will do as much to arouse interest and sentiment in favor of the Bar Association as anything else.

THE PRESIDENT—Some of the past Presidents of the Association are here. Perhaps their experience while in charge of the affairs of the Association might be of some service in connection with this matter. Judge Whitson, you were the last President; have you anything to offer?

JUDGE WHITSON—Mr. President, I really have not any scheme to propose. I do not think that the fact that we charge five dollars for membership would keep any lawyer out. I think we had better hold what we have in that respect. If we do not increase the membership and we do reduce the initiation fee we will run behind. We increased the dues last year to two dollars because we were informed by the Secretary that one dollar was not sufficient to keep up the current expenses. It has been a matter, of course, under consideration of every officer of the Association, every person, and the Executive Committee from year to year. I am unable to devise any way of arousing interest in the matter. It is a pity, of course, that the lawyers do not take more interest. It is hard to say what will induce them to do so. Those who do attend, I think have always felt that they have been benefited and I believe, as a rule, once a member and once at a meeting he desires to come again. If we could get them here once I think we could have them permanently, that is, as far as their engagements will permit.

MR. HOLT—I have one suggestion that occurs to me. I do not know that it is worthy of consideration, but if the President might appoint, in each town or city, a committee of a given number of lawyers who would undertake and whose duty it would be to solicit the joining of this Association and see each and every member of the bar who is not already a member and endeavor to induce him to become so. That, in addition to the sessions, would be the most direct way of getting at it and would produce results, and if it is in order, at the proper time I

think I will make a motion of that kind. I do not know just how the matter stands before the house now. I do not think the motion has been put yet.

THE PRESIDENT—Mr. Roberts made a motion to the effect that the resolution read, reducing the initiation fee to three dollars, be adopted. The Chair does not recall a second to that motion. The initiation fee in the past and at present is five dollars.

THE SECRETARY—Mr. President, this is a matter that has worried me a good deal for several years now. The President has been misinformed just a little. I think the membership has not fallen off in the last three or four years. I think when I became Secretary there were two hundred and twenty-seven members. I think there are now two hundred and sixty-nine members, but it fell down and then two years ago, when we met in Seattle, we had a big increase. Since then the roll has fallen off somewhat, but the reduction is particularly due to the fact that when I became Secretary I found a great many names on the books that had not paid for several years, and I did not know just what to do with them at that time. I supposed they would pay sometime during the year, so at the first meeting they were reported as members. The next meeting they were more than five years in arrears and some of them were dropped and I communicated with others and found a great many of them had removed from the state, for instance, Mr. Hoyt, who is district attorney at Nome, and two or three others have gone to Alaska, and James Hamilton Lewis, who has gone to Chicago, and two who have gone to San Francisco, and Mr. Kreider, who has gone to Mexico, and so on. Now, I think it will work out that members will pay two dollars quicker than they will one dollar. The present by-law was, until this year, that a member should pay one dollar a year and when five years in

arrears they should be suspended. Now, it costs nearly a dollar a year per member to get out a report. If a man got in the habit, when it was but one dollar a year, of letting it run until the next year—it was but one dollar more—he would let it run another year and so on until he had let it run seven or eight years, and, after I had written some of them several times, they would finally remit and say, “I didn’t know I was in arrears.” Some of them have probably waited until they were seven or eight years behind and then would pay up in full; some of them did that, at least. It was my suggestion that the initiation fee be fixed at five dollars and they would be credited with the first year’s dues. That would make them all the same. The custom has been, after the first year, to not pay any dues until the beginning of the second year thereafter. That seems to have been the custom. I do not know why, but, in going through the books, I find that if a man joined this year he would not pay any more dues until 1908, and then he would come in. I do not know why that was started. The by-law says five dollars shall include the dues for the ensuing year. I do not know whether it is capable of that construction or not. I believe with three dollars a year we could get in a good many, but my idea would be to let all those be reinstated. As a matter of fact there are only about fifty per cent of the two hundred and sixty-nine who have paid up. I think there is about a third of the two hundred and sixty-nine who are right on the verge of suspension, but I think a lawyer will send in a two-dollar check when he would not send in a one.

Mr. Robert’s motion was seconded by Mr. Dye.

MR. ROBERTS—I would like to suggest, before the motion is put, that, so far as I am personally concerned—I introduced the resolution—I have very little to say, but the Secretary has had charge of this whole matter and has given considerable at-

tention to it and is very anxious to try it as a change, and it seems to me we would certainly be no worse off than we are. We could try it for at least a year, and, if it does not work satisfactorily, we could change it at the next session and I am, therefore, willing to have it tried because the Secretary is so confident that it will increase interest in the Association.

Motion is put and carried.

JUDGE HANFORD—I would like to make a suggestion in the line of what has been discussed here. What I want to say will not be germane to the question we have voted on but it occurs to me, that, in order to keep up this Association, some work must be done to try to persuade lawyers who ought to be members of the Association to join it and become interested in its work. Every organization that I have ever been connected with in my life has required, at times and from time to time, some work of that kind on the part of the membership to tell those who ought to belong to the Association that it is a good thing and they ought to be in it. They ought to participate in the work of the profession and have a recognized standing among lawyers. Now, one object of having the Association meet in different parts of the state and in the towns which are centers of activity is to reach those who live in each particular locality of the state, to get them interested in the work of the Association, and I am inclined to think that we are likely to get better results from continuing this practice than we would to find some summer resort and go away from the centers of activity to hold the meetings. The meetings which have been held at Spokane have usually had the effect to attract the members of the bar in the northeastern part of the state, not only those who live in the city of Spokane, but in the counties adjoining. When we held the meeting at Ellensburg I noticed we gathered into our membership the lawyers who lived in the central part of the state, some, perhaps, who would not have joined the Assa-

ciation if the meeting had not been held there. I do not know how much the membership has been increased at this session, but it ought to have been increased by gathering in the lawyers of the adjoining counties who have not heretofore been associated with it, in the northwestern part of the state. The suggested sending out of a circular will probably bring some results but, wherever the meetings are held, some effort ought to be made to get the lawyers in that locality to understand that the Association is with us this year, and we must work together to keep up the credit of our section of the state.

THE PRESIDENT—The constitution now provides that members must be presented and either passed upon by the committee or by the Association, does it not, Mr. Secretary?

THE SECRETARY—Yes, sir; the Executive Committee of the Association.

THE PRESIDENT—In that respect the committee this year hardly felt at liberty to act. We had under consideration some such effort as that outlined by Judge Hanford, perhaps not as extensive, but we had in mind the sending of a circular to every member of the bar, as shown on the roster of the supreme court, requesting them to send back their initiation fee and dues for one year and thereby become members, but the constitution rather provides for an application and a passing upon that application. That, in its working, is practically a dead letter. Anybody who presents his application and is a lawyer and is known to be such and has paid his dues has got his receipt and his name has been put on the roll. If our constitution provided that anyone admitted to practice in the supreme court or Federal court in this state should be entitled to thereby become a member of this Association on payment of the initiation fee and one year's dues, the successive Executive Committees, as they might see fit, might feel at liberty to send

out circulars to those who were not members and thereby get them in.

MR. ROCKWELL—I rather like the circular idea, if it is got at in the right way. Now, the sending of a circular to the members of the bar of the state, signed by the Secretary or the President and Secretary, does not carry the weight with it that it might if it were signed by a special committee appointed for this purpose. Let that committee be lawyers of sufficient acquaintance in the state to carry their personalities along with this circular. I therefore move you that a committee be appointed to prepare a circular directed to the members of the bar of the state, which circular shall be sent out by the Secretary, this committee to be composed of the incoming President of this Association and Judge Hanford and Judge Whitson, of the Federal court.

THE SECRETARY—Mr. Rockwell, may I suggest that you make it a Committee on Membership and let them go a little further, if they so desire—further than that circular.

MR. ROCKWELL—I do not know that I want to put too much work on that committee. I just simply want to get the names of these gentlemen to this circular and let them prepare a sort of letter to send to the members of the bar. I think, if we send out a letter of that kind signed by the President of this Association and these two judges, that it will carry a good deal of weight with it and will make members of the bar of the state realize that there is someone here that is taking an interest in this thing and that it is of some use.

Motion is seconded by Mr. Root.

THE PRESIDENT—Would it not be a good idea to add to that committee the chief justice of the supreme court?

MR. ROCKWELL—It would be a very good idea, Mr. President, and I incorporate that in the motion—signed also by the chief justice of this state.

Motion is put and carried.

THE PRESIDENT—Mr. Secretary, will you read the provision with reference to the reception of members and see if there is anything there that requires attention.

The Secretary reads from by-laws:

“SEC. 5. Applicants may be admitted to membership by the Association or by the Executive Committee. The vote shall be by ballot. If balloted for by the Association, one negative vote in every four shall exclude the candidate; if by the Executive Committee, the vote shall be unanimous in his favor or he cannot be admitted.

Applications for membership must be in writing, signed by the applicant, who must be recommended by at least one member of the Association, and shall be given or sent to the Secretary, who shall present the name to the Association, if in session; if not in session, then to the Executive Committee for its action thereon.”

THE PRESIDENT—It seemed to us this last year that this provision really requires some amendment, especially if action such as that just outlined is to be taken, to provide that any member of the bar admitted to practice before the supreme court or Federal court in this state should be eligible to membership simply upon payment of initiation fee and dues.

MR. PARKER—To get that matter started, I move you that that section of the by-laws be amended to read, substantially, like this, that any member of the bar in the state of Washington, that is, of the state or Federal court, in good standing, shall be entitled to membership in this Association by simply paying the initiation fee, which includes the dues for that calendar year.

The motion received a second, was put and carried.

MR. BUNDY—I am not a member of the association but now that the necessity for recommendation is obviated I think perhaps I can get in somewhere. I would say that I think the mem-

bership will be increased from the bar of Everett by ten or a dozen if somebody would take the trouble to ask some of the boys to become members. I have not been invited myself. I have not been waiting for an invitation. I intended to get in at this session, but I think that perhaps some of the others feel that some of the members ought to come and see them, and I think while this session is on, and perhaps tomorrow while they are feeling pretty well, it would be a good thing to have somebody make it a point to see some of the members of the bar and ask them to become members of the association.

THE PRESIDENT—The Chair will appoint a committee of members who know all the members of the bar in Everett and in this vicinity and ask them to see them tomorrow and solicit them to become members of this association.

The only thing remaining in the morning will be the report of the Committee on Nominations and the report of the Committee on Obituaries.

MR. ROBERTS—I will say, Mr. President, that the report of the Committee on Nominations is ready and, if desirable, it can be submitted now.

THE PRESIDENT—The report of the Committee on Nominations is then in order and we would be glad to have it.

REPORT OF COMMITTEE ON NOMINATIONS.

To the Washington State Bar Association:

Your Committee on Nominations begs leave to report as follows:

1. We recommend that Seattle be chosen as the place of the next meeting of the Association.
2. We recommend that the following persons be chosen as officers for the ensuing year, to-wit:
 - E. C. Hughes, President.
 - R. S. Holt, First Vice President.
 - A. G. Avery, Second Vice President.
 - C. C. Gose, Third Vice President.
 - J. B. Bridges, Fourth Vice President.
 - C. Will Shaffer, Secretary.
 - N. S. Porter, Treasurer.

3. We further recommend that the delegates to the meeting of the American Bar Association be selected by the incoming President.

JOHN W. ROBERTS.

R. G. HUDSON.

W. T. DOVELL.

WILBRA COLMAN.

R. S. HOLT.

THE PRESIDENT—You have heard the report of the committee. What is the pleasure of the Association?

MR. PARKER—I move that it be adopted and that those named be selected as our officers.

The motion was seconded, put and carried.

THE SECRETARY—Mr. President, there is one matter that occurs to me. I make a motion that the delegates to the American Bar Association use their efforts to secure the meeting of the American Bar Association in the city of Seattle at the time of the holding of the Alaska-Yukon-Pacific Exposition. They have never had it west of Denver. This year it is to be held in St. Paul; 1907 it will probably go to the South and the next year to the East; it will be just right to have it in Seattle in 1909.

The motion received a second.

THE PRESIDENT—The motion is made and seconded. Any discussion?

MR. PARKER—What year is that?

THE SECRETARY—1909.

MR. PARKER—Tacoma hasn't any objection.

The motion is carried.

THE PRESIDENT—The Chair would request all members to be present and on hand at ten o'clock tomorrow morning when the report of the Committee on Obituaries will be the sole order of business for the forenoon. A motion to adjourn is now in order.

Before adjournment the Chair announced the appointment of the local committee on membership, consisting of Messrs. Bundy, Horan and Bell.

Upon motion adjournment was taken until ten o'clock tomorrow morning.

THIRD DAY.

MORNING SESSION.

THE PRESIDENT—The Association will please come to order. On the program this morning are obituaries of members of the Association deceased during the past year.

Obituary addresses were then made. (See Appendix.)

THE PRESIDENT—Does any other member desire to pay a tribute to a departed brother? If not, the business of the Association—

THE SECRETARY—Mr. President, I would make a motion that to the other departed brothers who are members of this Association at least a page of the report be devoted, and some person asked to prepare an obituary for them.

The motion received a second, was put and carried.

THE SECRETARY—Mr. President, I have been asked to read this:

“Be it resolved by this Association that the incoming President shall appoint a committee on membership in each county in the state, such committee to be of such size in any county as the President may deem advisable, and each of such committees shall be requested to solicit membership for the Association in their respective counties and shall have authority to collect and receipt for the admission fee on blank receipts furnished by the Secretary. The names of all members of the bar joining through any such committee shall be reported to the Secretary, together with the dues collected therefor, which dues shall be turned over to the Treasurer.”

The adoption of the resolution is moved and seconded.

THE PRESIDENT—Are there any remarks upon the resolution?

MR. HOLT—Mr. President, the resolution was drawn in line with what I suggested yesterday. It was merely for the purpose of suggesting some plan by which the membership of the Association might be increased by having a committee appointed whose duty it would be to invite the members of the bar who are not already members of the Association to become such and authorize them, at the same time, to accept the applications and receive the first payment, which is an important matter in closing up transactions of the kind.

THE PRESIDENT—It is supposed that these committees will act under the general supervision of the larger committee consisting of the Federal judges and the chief justice of the supreme court, I understand? These are to be local committees acting under the general committee? Is that the purport of the resolution?

MR. HOLT—That was not contemplated, but I suppose that should be—perhaps the resolution is a little out of order.

THE PRESIDENT—Except as a suggestion to that larger committee as to the best method of securing the names. I understood there would be a circular letter sent out by these gentlemen who were selected, to the lawyers throughout the state, and if I am right on that it seems to me that this would be simply to gather up the work for which this letter might pave the way.

MR. HOLT—That was my idea.

THE PRESIDENT—The understanding of the Chair was that that committee were to have general charge over it.

MR. ROCKWELL—That was the idea, Mr. President, that this committee that was appointed would be practically a Committee on Membership, and in the course of their work, that they should send to each member of the bar in the state a letter ask-

ing that member of the bar to become a member of this Association. Now, I see that the resolution that has just been offered and that has been spoken to by Mr. Holt could become a very valuable addition to this committee—a very valuable help to the members of this committee, and I can see nothing inconsistent in them, that the incoming President, as a member of this committee, appoint these committees in the different counties, and let the circular go out and the different committees in the counties follow it up. I think it would have a very good effect. I like the idea. And both report to the Secretary of the Association as to what they have done.

THE PRESIDENT—Have the larger committee appoint the smaller committees?

MR. ROCKWELL—I do not see but what it would be a good idea to have the larger or general committee appoint the smaller committees. Have the general committee a kind of “shaking” committee and the smaller committees to get around and pick up the fruit.

MR. HOLT—I accept that amendment.

Also accepted by the second.

The motion was carried and resolution adopted.

THE PRESIDENT—Is there any further business?

THE SECRETARY—The Executive Committee thought it would be a good thing this year to have the prosecuting attorneys meet with the Association. The other officers of the various counties of the state have met in convention from time to time. We thought there could be no better results obtained for the benefit of the state at large than a meeting of the advisers of these other officers, and we have had them here. The Executive Committee has also had in mind that the superior judges of the state should meet, sometime in the near future, and provide some uniform rules. I do not see Mr. Mires here. I was going

to say that the constitution provides that they shall, and if he were here, I would say, "Why don't they?" I move that the superior court judges of the state be invited to meet with us next year to prepare uniform rules of practice.

The motion received a second, and was put and carried.

THE PRESIDENT—Is there any other business to come before the Association at this time?

MR. ASHTON—If we are about to close, before taking the weary path we ought to express our thanks and appreciation of the generosity and hospitality which has been extended to us by our brethren at the bar in the city of Everett and in Snohomish county, and particularly I would suggest a vote of thanks, and would move a vote of thanks, to them and to our distinguished and able President during the last year, not only for his zeal and his energy in looking after the affairs of the Association, but for the very able parliamentary manner in which he dispatched the business of this meeting.

The motion received a second.

The motion was put by General Ashton, and carried.

THE PRESIDENT—I thank you, gentlemen, on behalf of the local Bar Association, for your consideration in this respect. It has been a great pleasure to us to have you here. We feel, as lawyers of Snohomish county, that we have now been put upon the legal map of the state and we hope that we will stay there in the future.

I wish, as the retiring President of this Association, to express to the Association my indebtedness, and the indebtedness of the Association, to our extremely efficient Secretary, Mr. Shaffer. After all is said and done, Mr. Shaffer is the Association, so far as getting up the meetings is concerned. He has the matter in mind throughout the year. He meets the members of the bar as they go down to the supreme court and he is con-

stantly getting new ideas with regard to papers and the proper men to read papers. He works up every committee report: writes every member of the committee and the chairman four or five times to get a report. He writes to the retiring President—I am speaking only of this President—and “jacks” him up about his duties from time to time. In fact, the whole machine would not have run had it not been for Mr. Shaffer’s very able and very careful attention to it. I feel, personally, under the very greatest obligation to him, and I am sure the Association does also.

MR. ASHTON—I move that Mr. Shaffer be included in that motion of mine.

MR. ROBERTS—I desire now to move you that the expressions of the President be considered as a motion and be put to the house as such.

The motion received a second.

THE SECRETARY—Mr. President,—

THE PRESIDENT—All those in favor of that motion manifest it in the usual manner.

The motion was unanimously adopted.

THE PRESIDENT—The steamer Inland Flyer will leave from the dock beyond the Great Northern depot, the larger dock on the waterfront. You will have no trouble in finding it. The boat will leave at twelve o’clock. When we arrive at the point on Whidby island, there is a slight walk, probably three or four hundred yards, up to the grove, which is situated just above the beach. In the grove lunch will be immediately ready and some water—ice-water. There will also be some ice-water on the boat which I hope the gentlemen will partake of freely. After lunch, we do as we please along the beach and here and there, and superintend and boss the man who has gone over there who says he can bake clams. He says he will have them ready

about half past four or five o'clock. Immediately after that, and probably about six or half past six, the boat will leave and you will get back here in time so that the visiting brethren from Spokane can catch the train leaving here at 9:21 for Spokane. The boat, after touching at Everett, will continue right on to Seattle and enable the Tacoma brethren and brethren from points farther south, if they desire, to catch the ten o'clock Interurban for Tacoma, at least ought to be able to make that schedule. I think, if any brother does not understand the matter, if he will speak to any one of the committee or any member of the local bar, after we have been there a short time, he may refresh his memory upon that point.

MR. ROCKWELL—In behalf of this Association, and some particular members of it, I want to inquire if that "ice-water" bluff is on the "dead square." (Laughter.)

THE PRESIDENT—The motion to adjourn is now in order.
Motion to adjourn is made, seconded and carried.

APPENDIX

PRESIDENT'S ADDRESS.

FRANCIS H. BROWNELL.

We meet today with hearts saddened by the recent awful tragedy in Seattle. We cannot erase from mind the sorrow-stricken home where lies, awaiting the last sad funeral rites, the body of one of the ablest and most distinguished of the younger members of the bar of this state, the victim of the son of one of the ablest and most distinguished of the older members of the bar.

Later in these proceedings, this bar will pay its tribute to the memory of our deceased brother. But we may, perhaps, here fittingly, at the beginning of these exercises, express our deepest sympathy, both with the stricken and bereft family of the departed, and the equally unfortunate and horrified father of the cause of all this woe.

This, the eighteenth annual session of the Washington State Bar Association, marks a new and somewhat important departure in the history of that body. Heretofore, with one exception—that of Ellensburg—for seventeen years the meetings of this association have been held exclusively in the three largest cities of the state, Seattle, Tacoma and Spokane.

But for some years it has been manifest that there were at least four other points in the state, Everett, Bellingham, North Yakima and Walla Walla, which have now a local bar of sufficient size to justify a meeting of the state association; and it has also been evident that, if the full attention of the members of the profession located in those cities is to be aroused in the work of this association, it is necessary that, at least occasionally, the annual meeting be held in those points. Two years ago the idea was adopted of preparing to meet alternately in one of the large cities and one of the small cities, as well as alternately in Western and Eastern Washington. In accordance with this plan the first meeting in a smaller city was scheduled for North Yakima last year, but the appointment of the then President of the association to be United States District Judge for the Eastern Division of Washington, and his consequent removal to the city of Spokane, necessitated a change in the plan, and the meeting of the association was held last year in the city of Spokane. Everett, this year, there-

fore, has fallen heir to the honor of being honored by the annual meeting of this association.

On behalf of the local bar association, I can assure you that we feel highly honored in having you in our midst. We bid you a most cordial welcome to our town and county; we extend to you the keys of the city, and hope that your stay among us will be as pleasant and agreeable for you as it will be for us.

It is supposed to be the scope of the President's address to touch upon those features of the law that have been especially attracting attention during the year of his incumbency.

Perhaps the most important of the court decisions of the last year has been that of the Supreme Court of the United States in the relation to divorce, in the case of *Haddock vs. Haddock*, 26 Supreme Ct. Rep. 525. The essence of that decision is that a divorce obtained by publication of summons against a defendant in a state not the matrimonial domicile, while valid in that state, may or may not be recognized as valid by the courts of other states, as they may elect.

In these latter days, when the custom has spread so rapidly throughout the United States a discontented spouse moving to some state whose laws are comparatively free in regard to divorce, and there obtaining a decree by publication of the summons, the effect of this decision is so far reaching and so full of possibilities that the question of divorce which has been agitating the country for the last ten years seems farther than ever from a settlement. The reasoning of the Supreme Court in *Haddock vs. Haddock* is logical. The decision is in accordance with many previous decisions of that court and the courts of the states. It may indeed be said that any other decision would not have been in strict accordance with the principles in regard to jurisdiction which have become embodied in both American and English jurisprudence. The English courts have never conceded that a court of one of our states could dissolve a marriage of English subjects, and it was but a few years ago that we saw the House of Lords solemnly convict one of its members of bigamy although that member, prior to his second marriage, had obtained a divorce from his first wife by publication of summons in the courts of one of the states of this country—Nevada, I think it was. *Haddock vs. Haddock* opens the way for all sorts of curious complications in the law of bigamy, the law of descent of property, and the legitimacy of children. Let us illustrate:

At the present time about half the states of the Union are opposed to the freedom of divorce, and in those states it is probable that the courts will hold that a divorce, obtained by a spouse in a state not the matrimonial domicile, where the defendant is served by publication of

the summons, is invalid. Let us assume that John Jones marries in the state of New York, one of the stricter states in regard to divorce. Tiring of his wife, he removes to Rhode Island, secures a divorce by publication of summons, and marries a woman in Rhode Island. The divorce is valid in Rhode Island. It is invalid in New York. Tiring of the Rhode Island woman, Jones moves to Dakota, again secures a divorce by publication of summons and marries a Dakota woman. The marriage is valid in Dakota; it is invalid in New York; it may or may not be valid in Rhode Island. Tiring of the Dakota woman, Jones moves to Washington, again secures a divorce by publication of summons and tired now of marriage, moves to South Carolina, a state of the stricter class, and there, exhausted after his exciting career, dies intestate, leaving children by each of his wives, and property in each state in which he had lived. What a Pandora's box of complication and litigation would ensue! Which children are legitimate and where are they legitimate? Which woman is his widow, and where is she his widow?

It is interesting to note that the Supreme Court in this case recognizes that fiction of the law known as a "matrimonial domicile," by which is meant the place where the marriage is performed, until changed by the two spouses together as man and wife establishing a domicile elsewhere. One spouse cannot change the matrimonial domicile without the consent of the other. The question of a personal domicile has always been one difficult to determine and it is easy to surmise that many delicate and nicely drawn distinctions will have to be applied in fixing or determining the locus of a "matrimonial domicile" in many cases.

In *Haddock vs. Haddock*, the Supreme Court was practically face to face with the serious question of whether it should facilitate readiness of divorce or adhere to those principles which permit of a divorce only in special and exceedingly peremptory cases. Had the Supreme Court decided, on the one hand, that a divorce of the kind we have been describing was valid everywhere, the policy of those states which do not believe in ease of divorce would have been destroyed and rendered ineffective, because any discontented spouse could get a divorce good everywhere by the simple expedient of going to Dakota or some similar state, and there publishing a summons and receiving a decree annulling the marriage.

Evidently the court thought it wiser to adopt that theory which is not only in accord with the decisions of the past, but which would also tend less to destroy the doctrine and policy of those states which still frown upon the annulment of the marriage vows. Thus each

state may, in the future as in the past, decide for itself how it will treat this important and serious problem.

The present session of Congress has witnessed one of the most learned, carefully studied and bitter debates since the period of Reconstruction.

The President, in his message to Congress, voiced the demand of an overwhelming majority of the people of the United States that the present great evils of railroad traffic, the secret rebate and discriminations in favor of certain shippers or points of shipment, be stopped. So universal was this demand, so overwhelming the sentiment in its favor, that even the railroads themselves dared make no open fight against it, but contented themselves with a contest for the best they could hope for, namely, a review of the findings of the Commission by the courts.

Every one realized this contention was made not from a fear or distrust of the Railroad Commission. The Railroad Commission is appointed as carefully, and its personnel is of as high a standard, as the Federal Courts themselves. Where in the past its decisions have been before the courts for review, they have been sustained as frequently as the decisions of one court are usually sustained by another. The great constitutional arguments, the legal learning and ability displayed in the debate on behalf of the railroads, did not impress the country at large, because of a well defined and far reaching conviction that it was not sincere. Rightly or wrongly, it was generally believed that, underneath all the seeming fairness, lay the real desire of the railroads to secure a court review, not to avail themselves of the court's justice but the court's delays. To be able by long, weary, and expensive years of litigation, to still many a charge of discrimination, to secure many a compromise and avoid many a controversy. In short, to continue to work injustice through the machinery of justice.

Again when the disclosures of the packing house evils aroused the entire nation to one insistent demand for remedial legislation, the packers, unable to stem the tide, sought not to do so, but, like the railroads, sought to save out of the wreck the privilege of a court review.

These two remarkable and prominent instances of a desire to secure the advantages of the delays of judicial proceedings are significant. They have served to call clearly and pointedly the attention of all men to what every lawyer has long realized, namely, that the last resort for a client in a desperate situation is to invoke the law's delays, the tedious machinery of our judicial procedure, in the hope of securing some concession, some compromise, or at least some mitigation of the

threatened evil, through the long lapse of time that must ensue before the slow mill of the courts can grind out an ultimate decision.

No intelligent man or body of men distrusts the integrity, the fairness or the justice of our courts; no standard could be higher, no results, when finally obtained, average better. But no intelligent man or body of men can properly justify or fairly excuse the tedious slowness of the process, the interminable delays, the never-ending obstacles, that impede the movement of the Car of Justice. Justice delayed is often justice denied. When one sees an admitted wrongdoer appealing to the courts, scarcely concealing the fact that he seeks not justice, but only delay, we may well pause to consider whether something is not wrong in our system; whether the time is not ripe for a reform of our judicial procedure; whether our courts have kept abreast of the spirit of the times and the tendency of the age; whether our legal machinery has not become so antiquated and time worn as no longer to properly perform its functions.

When the future historian comes to write the history of the present generation, he will perhaps emphasize its most striking characteristic as being a love of speed. With the development of the steam engine, the discovery of many of the laws of electricity, there has come a shortening of the process, a lessening of the time consumed, in almost every kind of human activity. The trolley car has succeeded the horse car. The horse, too, is now rapidly being discarded for the automobile. The average artisan in going to his work, if he walks at all, walks on the treadles of a bicycle. We telegraph where our fathers used to write. We call up by 'phone where we used to call at a brother lawyer's office. The fastest trains, the speediest boats, are the most popular and get the most business. The rural mail delivery, the omni-present telephone, place even the most isolated districts in close touch with the activities of the whole world. The modern farmer plows, sows, and reaps by machinery, and often less time is consumed between seed time and harvest time than between the service of a summons and entry of final judgment in the first court. Every day, here in this little city of 20,000 people, transactions involving the shipment of lumber to South Africa or South America, of paper to Australia or Singapore, of lead to Hongkong or Yokohama are concluded, the money received and the incident closed more speedily and easily by far than a case can be brought to issue after the service of the summons.

This increase in the rapidity with which business is transacted and things accomplished has been true of the professions as well as

of lines of business or manufacture. The physician no longer waits days, perhaps weeks before being able to diagnose the disease of his patient; a few hours, often a few minutes, is sufficient; and today no one can close his eyes in sleep with any certainty that he may not be on the operating table with his appendix cut off before morning. Modern journalism has placed on the breakfast table of every man the news of the entire world for the preceding twenty-four hours. We know not only what has happened in our own town, but all of importance that has happened in the remotest corners of the earth.

The actor can no longer hold the attention of his audience for the four or five hours of the plays of old. A play of Shakespeare must be cut nearly in two before the modern audience can be induced to listen to it; no modern playwright, no modern actor, can hope for success who cannot in a few graphic sentences, convey the thought which the actor of fifty years ago would have deemed himself unable to express in less than a quarter of an hour. Few can now read through the three volumes of Richardson. Even the two volumes of Scott, Dickens and Thackeray seem tedious to the modern mind. The present day reader expects to take up a novel and in a few hours, an evening at the uttermost, to be prepared to learnedly discuss its place in literature. Even the minister has felt the spirit of the age. The long tedious sermon no longer exists. Few ministers who preach for over twenty minutes succeed in holding a pulpit for any great length of time. The three-hour service of our grandfathers, the two-hour services of our fathers, have been boiled down to an hour and there are many strong supporters of the church who are wondering if the same results cannot be obtained in forty-five minutes.

What of the law? What processes of the law have been shortened in the last twenty-five years? How much more rapidly is a case tried now than it was then? How much easier is it to pass a title? How much more smoothly and rapidly and readily do transactions run through the courts, and even through a lawyer's office now, than they did a generation ago? Is it not true that no line of business, no profession, no department of modern civilization has developed less, has shown less improvement, has been less able to shorten its processes, than has that of the law? I am not now speaking of changes in the *principles* of the law, of that great body of rules of human conduct prescribing what is right and prohibiting what is wrong. The breast of every lawyer swells with a pardonable pride as he recalls the facility and accuracy with which the great principles adopted in the past have been adjusted and fitted to modern conditions. I am speaking solely of the *procedure* of the law, of the machinery by which its product,

which is justice, is turned out; above all, of the speed with which that machinery changes its raw material—the differences which arise between men—into the finished product—the announcement of the decision which shall control as to the property or rights involved and do justice in the case at bar.

Is not this machinery out of date? The method, cumbersome and uneconomical, the process too slow and tedious? Have our courts kept abreast of the times? Are we, as a profession, up to date? Are we in harmony with the spirit of the age? Can we point to new improvements, to quicker results, to processes more economical, in time and money—in short, can we as a profession lay claim truthfully to having improved on the methods and processes of our fathers? Can the principles of the law be applied more readily and easily than a generation ago? Can a decision be reached more quickly, is a crime punished more unerringly and speedily, is justice accomplished more quickly now than then?

New York is the embodiment of all that is latest and newest in the arts of invention. Perhaps no city in the world is so quick to grasp any new idea which tends to hasten, expedite or economize any process of human activity. Here, in the metropolis of the most progressive and active nation on earth, are gathered together the leading and most capable minds in all professions and lines of business. If anywhere on earth one can avail himself of the latest and most modern methods of doing business, it is in New York. But there is one exception. It is the courts. Here the reverse is true. The writer had occasion, during this last winter, to be interested in a case coming on for trial in the Supreme Court of that state, which corresponds in all essential respects to the Superior Court of this state. The New York firm engaged in the case was one of the largest and most prominent firms in that city. Their office abounded with every luxury and every facility. In one of the most modern buildings in the city, one was whirled in an express elevator to the sixteenth floor. The entire floor was devoted to the business of that firm, some forty rooms being occupied. There were stenographers, and private clerks, managing clerks, law clerks, messenger boys, speaking tubes, telephones, private vaults, a large library and every facility for the quick and expeditious transaction of business. I found, however, that a case cannot hope to be tried in the New York Supreme Court within three years after it is begun. At the expiration of that long length of time, when witnesses have died or wandered away, when the transaction involved has passed largely out of the minds of those interested, the case is called on the trial docket. Two hundred new cases each week are placed on this

docket, and must thereafter be ready as soon as called. They may be reached the next week, and may not be tried for two months. In my particular case, it was six weeks from the time when the parties had to be on hand in readiness for trial before the case itself was actually reached. Another three years must elapse before a case can be taken through appeal to a final decision in the Court of Appeals.

In our own state the abuse of delay is not so great as it is in the largest centers of the East. In most of the counties of this state, it is possible for a man to get to trial six months after he has served his summons, if his lawyer exercises reasonable diligence; and if an appeal is taken from the Superior Court, a decision of our Supreme Court can ordinarily be had within a year thereafter. Unless there has been a mistrial and the case is sent back for a retrial, a final decision can usually be reached in about eighteen months. In the Federal Courts in this state about the same length of time is consumed as in the state court. How absurd are such delays! It is only the force of habit, the unthinking following of the methods of the past that has accustomed the members of the bar to accept the length of time above indicated as no more than reasonably necessary for the purpose of conducting properly the machinery of a court of justice.

The ordinary business man is face to face with a controversy over facts each day. Sometimes these controversies involve great amounts of money or great values in property. He is accustomed in his daily life to quickly and speedily determine the truth of facts, even the most complex, to reach decisions, even the most important, in fewer weeks, often days, than it takes months in the courts to determine the same matters. He may not act only on legal evidence, but he acts on evidence which produces after all, the result desired, namely a knowledge of what is true and correct.

An accident occurs in one of our mills or on one of our railroads. Immediately the attorney of the company or of the insurance company investigates the facts. In less than three days, as a rule, he has seen the witnesses, investigated the situation, determined upon the liability or nonliability of his client, who acts accordingly. Suppose later a suit is brought. In the investigation and final determination of the very same state of facts, which consumed less than three days in the first instance, the courts of justice will take anywhere from eighteen months to three years. We are so used to this condition of affairs, that we now have come to consider it a necessary and inevitable part of the administration of justice. But is it necessary? Can it not be avoided? Can the processes not be shortened and the time consumed lessened?

Probably every member of this association meets, almost daily in his professional life, the sneers and jibes of a client, at the slow and tedious processes of the law. While our courts and our legal processes still retain the respect and confidence of the community and of the people so far as the *justice* of the results is concerned, they are beginning to lose the confidence of the people as to their *methods*. Delay in obtaining results is so intolerable to the modern man of affairs, that no profession or business can long retain the confidence and respect of the business world that does not conform to the modern demand of speed in its processes. And because of that delay the impatience of the average business man is very rapidly increasing. Day by day there is a greater tendency to avoid the courts and judicial processes as much as possible. Lawyers are now employed by all business enterprises of any considerable magnitude, more to keep a client out of court than to assist him after he is in court.

In a blind sort of way the business world is seeking a method of avoiding the courts altogether. This is illustrated in the rules of those stock, produce, wheat and cotton exchanges which exist in our largest cities. No one of these could live if their members were in litigation, one with the other. Take, for instance, the New York Stock Exchange, where transactions, the largest in dollars and cents that take place anywhere in the world, are carried on. Should a difference there arise between two or more members, it is referred to the Committee on Arbitration, which at once meets and forthwith determines the controversy, which is rarely over forty-eight hours in process of complete and final settlement.

Another instance of a desire to avoid the delays of courts is found in insurance policies, which all contain clauses for adjusting the amount of the loss by arbitration and the decisions of the arbitrators are generally as accurate, as just, and infinitely more speedy, than could the decision of similar questions possibly be if rendered by the courts. Very many contracts between railroads now contain clauses referring disputes to arbitrators. In fact the number of instances in which disputes as to questions of fact shall be determined by arbitration is steadily growing in number, and the business world is rapidly coming to look with greater and greater favor on this method of settling disputes between men who expect to continue doing business with each other in the future.

The legal profession, as a class, is perhaps the most conservative body of men belonging to any profession or any line of business. The entire atmosphere of the law is a worship of the precedents of the past. The decisions of judges, embalmed in print and entombed in calf skin,

fill our reports and are read and expounded day by day, as being a sufficient reason for following a similar method of decision in modern cases as they arise. Inevitably the result from this attitude of mind, is a tendency to do things now exactly as they were done in the past. Worship of precedents brings about as fixed and unelastic a system as worship of ancestors produces a dislike for change and a horror of anything that is new. It is almost as difficult to get a lawyer to adopt a new method of transacting legal business as it is to get a Chinaman to adopt a new invention, and for the same reason, each has become fixed in a love of the precedents of the past.

Lawyers have made many *bona fide* efforts to simplify things and to hasten the process of pleadings. For instance, when the old common law system had become refined, and refined to such an extent that it could be refined no more, with one fell swoop, many states abolished the common law and adopted the code. Thereupon the profession immediately started to refine on the code, and distinguish it, until now in those states which have had a code for fifty years, there has grown up as involved a procedure, as artificial a nicety of distinction as ever existed under the common law practice.

Another instance of the inability of the profession to quickly or speedily abolish a habit of the past, is shown in our Federal procedure. Can any one give any good reason why the curious historical relic of modern equity procedure is still retained? Why involve the profession in all the additional work of keeping a mind refreshed on the nice points of equity practice as distinguished from the law procedure? Why is a man who is perhaps able to carry on a case on the law side of the court, absolutely at sea, hopelessly adrift, if he happens to come before the same judge sitting in equity? The principles of equity do not need any different procedure to be enforced. Then why have all the cumbersome machinery and the tremendous expense of a separate procedure, if the remedy sought happens to be historically equitable in its nature rather than legal?

Too many lawyers regard a law suit as a sparring match between lawyers, with the judge as referee. They lose sight of the ultimate function of a court of justice, of its sole *raison d'être*, which is to dispense justice quickly and speedily. The courts and the bar ought to make the machinery for this purpose the simplest and the most expeditious possible, and ought not for a moment to tolerate old methods, the time worn ways and an involved practice, which only result in traps to the unwary, and to the frequent decision of cases, not on their merits, but upon pure technicalities of pleading or practice.

The publishers of the *Encyclopaedia of Pleading and Practice*, in

their prospectus, claim that over fifty per cent of all cases brought are decided on points of practice or pleading, rather than on their merits. In this state today, there is rapidly developing a tendency, so often manifested in the history of the law in the past, to gradually develop an involved system of procedure and to make continuously more intricate the methods of practice. And to one who has studied the history of the development of legal procedure in the past, the future of the procedure in this state seems following rapidly the same tendencies that have manifested themselves in generations gone by. Every system of legal procedure was, in its inception, simple and adapted to the needs of the time. Then came the hair-splitting process. Gradually precedent on precedent was established until finally in place of the simple, speedy and effective practice, there has grown up a complicated system, cumbersome, intricate and slow.

What is to be the remedy? How are the wheels of justice to be speeded? The remedy must be a radical one; the knife must be applied sharply. Why not, therefore, cut out the great cause of delay by cutting out the means by which such delay is ordinarily obtained, namely, the motions and the demurrers in the making up of issues? Why not have the only pleading on the part of the plaintiff the complaint and reply, and on the part of the defendant an answer or demurrer? A demurrer only in case the defendant elects to stand on the demurrer in advance if the same be overruled. Why not cut down the time to answer to ten days? Most lawyers can, and often do, learn as much about a case as soon as it is brought into their office, as they know later, yet we all, as a matter of course, take the full twenty days when it would be much better for ourselves, saving us much work, if we immediately prepared and filed the answer. As for all the motions, the bills of particulars, the demurrers, these are mostly unnecessary, and after all is said and done, serve only a scholastic and theoretical purpose. Very little is really accomplished by them, while they afford the means of endless delays, and of the forming of various sorts of traps to entangle the feet of the unwary. They cause the busy lawyer to spend about three times as much time and trouble over a lawsuit as there is any need of spending, or as he would otherwise spend. Why not have a case at issue fifteen days at the utmost? Very speedily the bar would adjust itself to such conditions. The complaint should be simply a statement of the plaintiff's view of the controversy, the answer a statement of the defendant's view of the controversy, and they should thereupon go to trial.

This is, of course, adopting in the superior court a practice very similar to that which now prevails in our justice court. The first

thought of such a change is rather shocking; almost sacrilegious; but would it not really be for the best? Does not the justice court, with its simple practice, its effective and speedy method of bringing about a decision, really more nearly fill the ideal of the function of the court, than does our superior court with its comparatively complicated system? Is not the bar as a rule as well able to try their cases without motions and demurrers, under the simple practice of the justice court, as under the more complicated practice of the superior court? Is not justice done in that court as often as in the higher court, and far more speedily? A return to such a simple form of practice would not only relieve the lawyers themselves of a tremendous amount of work and worry which is now expended over motions and pleadings, but it would save greatly the time of the courts. Cases being rapidly got at issue could be immediately set for trial and rapidly disposed of.

Another way in which time could be saved, in many instances, is on our rules of evidence. In this respect, the courts themselves are rapidly taking the initiative. Since the adoption in this state of the jury fee system, with its consequent result of a large majority of civil cases being tried before the courts alone, there has been a marked change as to the formality of proof required. Scarcely a case is tried before the judge alone, where upon an objection to the introduction of some evidence, the court will not say: "Oh, I will hear it. It is perhaps not strictly admissible, but if it is not, I will not consider it in making up my decision, and the supreme court will not consider it on appeal."

This tendency is greatly decried by a certain proportion of the members of the bar who are fond of the old rules of evidence, and of being able to demand an enforcement of them. But after all, is not the tendency of the courts in this respect a proper one? In our daily lives, we are constantly acting on evidence which would not be admitted in a court of justice. We form our opinions, we base our business transactions, we stake our fortunes, our rights of property, and our hopes of success, on facts which could not be proved in a court of justice. The Germans have few rules of evidence in their system of jurisprudence. A witness gets on the stand, and tells all he knows, all he has heard, all his wife and his wife's relations have heard. Yet, justice seems to be done. The judge sitting on the bench, as in his daily life, comes instinctively to weigh the relative value of this class of testimony.

I think it was William M. Evarts who said, toward the close of his long and markedly distinguished professional career, that in his opinion the court which rendered the most infallibly correct decisions on the matters coming before it for determination, was a ladies' sewing so-

ciety. And yet, perhaps in no case was the judgment of that most infallible tribunal based upon evidence which would be admitted in a court of justice.

After all, in modern times, about the only result of our rules of evidence, is to greatly lengthen out trials. In (a) arguments over its admission; (b) laying foundations for secondary evidence; (c) postponements and adjournments to get witnesses rendered necessary by the exclusion of evidence first offered; (d) the twisting and turning of counsel in laying a basis on a second attempt for the introduction of testimony which the court has on the first attempt excluded.

It is now a general experience of courts and counsel, that the astute counsel manages sooner or later, somewhere in the course of the trial, under some pretext or other, to work in nearly all of the evidence that he wants to. If the first pretext for its admission is not sufficient, he tries, tries again till he succeeds. Why not, therefore, materially shorten the process? This is what our courts sitting alone are very rapidly doing, and the day will probably come at no distant time hence, when the same tendency, now so manifest in courts sitting without a jury, will likewise be adopted even when sitting with a jury.

Diffuseness and prolixity are the perils of the lawyer. Chief Justice Parsons, like Scarlett, said that "a half hour was long enough in which to argue a case to court or jury." He was marvelously concise. Of him Story said: "His words are gold." Sir James Scarlett, being asked why he never addressed a jury more than half an hour, replied: "It takes just thirty minutes to lodge an idea in a juryman's head. The average juryman's mind can hold but one idea, consequently if I succeed in putting a second idea there I only dislodge the first." Why not adopt the Scarlett idea as to arguments?

Of course all human institutions are imperfect and susceptible of improvement. Perhaps the general principles of the law as now adopted in this country are as nearly perfect as anything the brain of man has yet devised. The sole fault lies in their application, by a method at once simple, accurate and speedy. This is the problem of most processes. The law is no exception. Upon us, as lawyers, falls the duty and responsibility of devising such a method.

THE COURT'S WORK.

By HON. FRANK H. RUDKIN, of the Supreme Court.

Mr. President and Gentlemen of the State Bar Association:

By invitation of your committee, I appear before you to explain the manner in which the judges of the supreme court of this state transact and dispose of the business brought before them. At the time I accepted your invitation I fully expected that the May session of court would close at an earlier date, and that I would have an opportunity to give some time and consideration to the subject assigned me, but in this I have been disappointed. I will therefore confine myself to a brief outline of the routine work of the court.

You are all no doubt familiar with the general rules of the court, relating to the preparation of the docket for each session, and the assignment of the cases for argument. Twenty-one cases are assigned for each week of the session. The briefs in each of these cases are read by the several judges before the arguments, whether the cases are argued orally or not. At the close of each week, the cases submitted during that week are taken up by the full bench for consultation, decision and assignment for opinions. As a general rule, the transcripts are not read or consulted before the cases are assigned, so that cases are disposed of, as far as possible, on the briefs and oral arguments alone. A large percentage of the cases may be disposed of in this way, except to verify the statements contained in the briefs by a reference to the record, whenever there is a disagreement between counsel as to what the record contains. In a considerable number of cases, however, no definite opinion can be formed from the briefs and arguments alone, and these are assigned for examination. The judge to whom such assignment is made examines the record and consults informally with the other members of the court, and if there is any difference of opinion or disagreement, each member then examines the record to his own satisfaction.

While the cases are nearly all disposed of in this way in consultation at the end of each week, the conclusion reached is not final until an opinion has been prepared and signed by a majority of the court. If the judge to whom a case is assigned reaches a conclusion adversely to the decision in consultation, after an examination of the record, he makes that fact known to the other members, and a further con-

sultation is held. If a majority of the court still adhere to their former views, the case is reassigned to some member of the court who shares the views of the majority. If, on the other hand, a majority conclude that the conclusion reached by the member who has examined the record is the correct one, the opinion is prepared in accordance with that view. After an opinion has been prepared and signed by the judge to whom the case is assigned, it is passed around to the other members of the court. If they concur in the judgment, and approve of the opinion, they sign it and pass it on to the next. If they dissent from the conclusion of the majority, they prepare a dissenting opinion or remain silent. If they concur in the conclusion reached in the opinion, but disapprove of the language used, or the reasons assigned, they discuss the matter with the judge who prepared the opinion, or the matter is taken up for further consultation. As soon as an opinion has been submitted to every member of the court, and is signed by a majority, it is filed with the clerk. If a member of the court does not concur in or dissent from an opinion filed, it is because he dissents and does not care to express that dissent for lack of time or otherwise, or because he does not approve of the reasons assigned for the judgment, or because he was disqualified, did not participate, or was absent when the opinion was filed. When cases are submitted on briefs, they are taken up at the close of the week in which submitted, and decided and assigned for opinions in the same manner.

In addition to the foregoing, the court holds a motion day on Friday of each week during the session, and on the last Friday of each month when the court is not in session, except during the months of July and August. I desire to lay special stress on the exception at this time. On motion days all motions directed against any portion of the record, motions to dismiss appeals, applications for extraordinary writs, etc., are heard. Immediately after the hearing, these matters are disposed of. If they involve questions of practice only, upon which the court has repeatedly expressed itself, they are granted or denied without an opinion, but otherwise they are assigned and disposed of as other cases.

Cases are assigned to the several judges in rotation. The names of the judges are written at the top of the fly leaf of each bar docket, and the cases are assigned in the order in which they are submitted, each judge placing the number of the case under the name of the judge to whom the assignment is made. In this respect the members of the court take their chances, just like the litigants. If the judge to whom a case falls is for any reason disqualified, or does not concur in the views of the majority, the assignment is made to the next judge against whom no such objection exists.

I am not familiar to any extent with the practice in other appellate courts, but in some, at least, the entire record is printed, so that each member of the court is provided with a copy. Under such a practice the entire record may be examined by each member of the court, before consultation or assignment for opinions. This practice has many advantages over our own, but it could never be adopted in this state without a radical reform in the method of bringing cases before the supreme court, and this for two reasons; first, it would bankrupt litigants to pay the expense of printing the records sent up; and, second, it would blind judges and consume all their time in reading them. The record in a case is supposed to be prepared with a view of presenting certain questions to the court in which the record is filed, but this idea is utterly disregarded in this state. In nearly every case the record contains everything from the summons to the final exception to the last order entered in the court below. It even goes beyond this, and contains page after page of arguments of counsel, and rulings of the trial court. While it is a well recognized principle that every trial, whether by court or jury, eliminates many controverted questions of fact from the case, so far as an appellate tribunal is concerned, yet no heed is paid to this when it comes to the preparation of the record on appeal. Such practice adds greatly to the expense of litigants and to the burdens of the appellate court. The court has no means of knowing whether the testimony of a witness is material or otherwise, until it has been read, and it is poor consolation to discover the fact at that time.

To illustrate: An appeal is taken from a judgment of nonsuit in a personal injury case. Why should the appellate court be burdened with that portion of the testimony which relates to the amount of the recovery alone? If the only question in the appellate court is that of negligence on the part of the defendant, or contributory negligence on the part of the plaintiff, why should not the record on appeal relate solely to that issue? A witness is cross-examined for hours without disclosing anything material to the case. This course is justified in the court below, but why should such cross-examination appear in the transcript on appeal? These remarks are made not by way of criticism, but to explain the conditions which confront the supreme court of this state in the discharge of its duties. In view of the manner in which the business of the court is transacted, from necessity rather than from choice, it is of the highest importance that briefs should contain a plain and concise statement of the case and the points at issue. The attorney who is fortunate enough to give the court a clear understanding of the facts in his case, and the questions involved on

the appeal, does more to enlighten the court than will any amount of random talk he may indulge in.

Every brief should contain a clear and concise statement of the case (not the pleadings or testimony) and of the points at issue between the parties. Each assignment of error should be separately discussed, except where several assignments involve the same general question, and each assignment should be followed by a citation of the authorities in its support. There is little time for repetition in this busy age, and counsel should not in general argue their cases in their briefs, and then come before the court and substantially repeat the arguments which the court has already read. This suggestion is not made to discourage oral argument, but to discourage needless repetition.

The final step in a case is the petition for a rehearing. These petitions are examined by the individual judges from time to time at their leisure. If they find nothing in the petition that calls for further consideration or investigation, they sign in favor of a denial, and when a majority of the court has reached this conclusion the petition is denied. If, on the other hand, any member of the court feels that further investigation or consideration is desirable or advisable, the matter is taken up by the court for further consideration, and the petition is formally denied, granted, or an answer called for. When denied the work of the court is ended, and so with this paper. We have done our best. To err is human, and we may be possessed of our full share of humanity's infirmity, but we console ourselves with the thought that we are right at least a portion of the time, like the dummy clock that stands before the jewelry store, even if we have to decide a question both ways to demonstrate it.

SOME QUESTIONS IN REAL ESTATE LAW.

By GEORGE E. WRIGHT, of the Seattle Bar.

The subject of this paper was chosen a year ago. It then pleased me as being broad enough to include anything which I could conceivably desire to discuss. It now amuses me to find, a year later, that my questions are only three or four, and that they all relate to the examination of titles, and that, with one unimportant exception, they all have their origin in the system of community property.

The first one is a question of conveyancing, pure and simple. In our present practice in conveyancing there is one defect which is conspicuous and serious. I refer to the failure to state the name of the husband or wife of the grantee in drawing deeds of real estate.

Under our present practice, if an attorney finds in the chain of title a deed executed by the owner of the record title and by his wife, he has no means whatever of determining from the abstract whether or not there was not some other wife of the owner at the time when the owner acquired his title. Such other wife may have died or have been divorced without anything appearing in the abstract to indicate such condition. Frequently, also, it happens that the owner of the record title is recited in the deed to be an unmarried man, whereas, in fact he is a widower and had a wife living at the time when he acquired title. If in drawing deeds we would state after the name of the grantee, either that the grantee is unmarried, or would give the name of his wife, then the record title would upon its face show what, if any, community interest had at any time existed.

On more than one occasion the community property system has been criticised before this association as being unduly cumbersome and as endangering innocent purchasers. If the simple changes which I have suggested were made, whatever ground for criticism there may be in this respect would disappear. It is discreditable to the lawyers of this state that the community property system has prevailed for upwards of twenty-five years, and that the lawyers who draw deeds have not yet made any change in conveyancing to meet the requirements of the system. In this respect, we cling slavishly to a form used by past generations, before there was such a thing as community property. When dower and curtesy were the measure of marital property rights, the deed now in use was a very appropriate form. Then the

only essential inquiry was whether or not the grantor was married or unmarried at the time when he executed the deed. If he had been married at the time of acquiring title, that fact was immaterial. For whether the marriage relationship had been terminated by death or by divorce, in either case the inchoate right of the wife had been extinguished and the estate of the surviving husband left untrammelled. Accordingly the needs of the title examiner were then fully satisfied by the recital in a deed that the grantor at the time of executing the deed had no wife or husband.

Under the community property system, this recital has no force or effect whatsoever except as it may be supposed to indicate what was the grantor's marital condition at some prior time when he acquired his title. The essential fact is not who is the grantor's wife at the time he conveys, but who was his wife at the time when the property was conveyed to him. This essential fact can be stated in deeds with perfect ease, and yet, instead of stating it, we as a rule entirely omit its statement and content ourselves with remotely implying it by a statement as to who is the man's wife at the time when he parts with his title.

One of the greatest practical services which this association can render to the bar of this state is to see to it that the publishers of deeds incorporate in the printed blanks an appropriate space after the name of the grantee for the statement of the name of the wife or husband also. The association should appoint a committee to see that this step is taken.

In this connection it is proper to call attention to the fact that as regards releases of mortgage, also, we have failed to adapt our forms to the community property system. Where a mortgage is made to a woman as mortgagee, the instrument does not commonly show whether or not she is married. If married, then the presumption of law is that the mortgage is community property, in which case the mortgagee named has no right to discharge it, for the husband alone has the control and management of community personal property. It is, however, almost the universal custom to take a release executed by a female mortgagee without question and without investigation. It is hardly necessary to say that the time will come when such a release will not be accepted. It has been suggested that it may be presumed, in such a case, that even though the property was community property, yet the husband had authorized the wife to deal with it and would be estopped from questioning the release. Why there should be any such presumption in the case of a mortgage any more than there is in the case of other personal property or of real estate, it is difficult to see. It may

be added that the same principles which apply to a release of mortgage govern its assignment also.

There should be another reform in conveyancing by discontinuing the use of the word "unmarried," and substituting the words "bachelor," or "spinster," where the facts permit either of those words to be used. The words bachelor or spinster both have a definite meaning with reference to the previous condition of the parties as regards marriage. The word unmarried does not seem to have any such meaning. Yet this indefinite word is commonly used, while the definite words bachelor and spinster are rarely used.

The question frequently arises as to whether, in a particular case, a conveyance executed under a power of attorney should be accepted. Concerning this it may be remarked that execution by an attorney in fact is always undesirable and often of doubtful validity. This, of course, is particularly true where the power of attorney under which the agent is assuming to act is several years old. Many things not appearing of record and not within the knowledge of the parties may make the authority of the agent doubtful or even nonexistent. For instance, the death of the principal although not known either to the agent or to the other party to the transaction, *ipso facto*, revokes a power of attorney. 1 Am. & Eng. Ency. Law (2d ed.), 1222. So also may the insanity of the principal. 1 Am. & Eng. Ency. Law (2d ed.), 1226. There is a question whether the revocation of the agent's authority, communicated to the agent, but not communicated to the other party to the transaction, may not, under some circumstances, make the act of the agent void. And on the other hand there is a question whether or not the mere recording of a revocation not actually communicated to any one, may not be good. *Gratz v. Land Co.*, 82 Fed. Rep. 381; *Morgan v. Stell*, 5 Bin (Pa.), 305; *Bush v. Van Ness*, 12 Vt. 83; *Best v. Gunther* (Wis.) 104 N. W. 82, 918. Without going into this subject further, it evidently appears that there are certain known dangers attending the taking of a conveyance through an attorney in fact, and that there are other possible dangers which it is difficult specifically to enumerate. The safe rule of practice is whenever possible to disregard the power of attorney and insist upon the execution by the principal, personally.

In this state we have a statute providing for the recording of powers of attorney but containing no provision for the recording of revocations. The enactment of a law providing for the recording of such revocations should receive the consideration of those who interest themselves in proposing legislation. The state of Wisconsin has such an act which might serve for a form, though the Wisconsin statute

appears to be in some respects defective. Reference to this act will be found in *Best v. Gunther*, *supra*.

Deeds by administrators and executors give rise to a question of great practical importance. The question is whether such a deed passes the entire community interest, or only the one-half interest of the deceased spouse. With reference to an administrator's deed, this question was early presented to the supreme court and passed upon in the case of *Ryan v. Ferguson*, 3 Wash. 356. There the court held that such a deed passed the entire community interest, although the language of the statute and the language of the deed itself purported to cover only the right, title and interest of the *deceased*. The legal consequences resulting from this decision have not as yet been elaborated by any court decision. Certain things are, however, plain. One of these is that an administrator cannot sell community real estate to pay a separate debt of the deceased. Otherwise he would be doing what the deceased himself could not have done in his lifetime. The law does not permit community real estate to be subjected to the payment of the separate liability of either spouse.

If, then, an administrator's deed conveys the entire community interest in the real estate, and if such an interest cannot be sold to pay a separate debt, it necessarily follows that at some point prior to the execution of the deed a judicial determination can be had of the fact that the debt really is a community debt. This much was clearly intimated by the court in the *Ryan* decision. It would seem to be the law that when an administrator makes application to sell real estate belonging to the deceased, the heirs, creditors, and other parties interested, have a right to be heard upon the question of whether or not the debts are community debts, and whether or not the property proposed to be sold is community property. The adjudication of the court upon such hearing is conclusive upon these questions. If at the hearing no objection is made by the parties interested, then whatever facts are necessary to support the validity of the sale in these respects will be presumed in favor of the decree. The court in the *Ryan* decision expressly so stated, although it must be confessed that the statement of the court lost force from the prominence given in the opinion to other considerations and particularly to considerations of convenience. It is to be regretted that the decision in the *Ryan* case is also based in part upon a *presumption* as to what the probate court is to be considered as having held and determined. The decision does not leave it clear whether this legal presumption would be conclusive as against a direct attack upon the court proceedings. Still, in the light of this decision and of the prevailing probate practice, it can hardly be doubted

that an administrator's deed ordinarily conveys the entire community interest and is unobjectionable from a purchaser's standpoint.

A very different situation is found as regards an executor's deed. and by an executor's deed I mean a deed executed under a power conferred by will as distinguished from a deed executed under an order of sale by the probate court. An executor derives his power solely from the grant made to him by the person deceased. The power does not extend to community property. As to this the deceased could give no authority to convey either while he lived or by instrument to take effect after his death. Upon this point the supreme court of California has said (*In re Wickersham's Estate*, 70 Pac. Rep. 1079):

"But, assuming the objection to be material, it is answered by the fact that the executors' return of sale is itself materially defective in failing to show that the sale was made for the payment of debts, for which alone they were authorized to sell. *Sharpe v. Loupe*, 120 Cal. 89, 52 Pac. 134, 586. The petition does, indeed, allege that the sale was made under the powers of the will, and ordinarily this would be sufficient (Code Civ. Proc., §§ 1561, 1562); * * * But the testator had no power to authorize the sale of his wife's interest, except for payment of debts (*Sharpe v. Loupe*, *supra*); and hence, as it appears from the appellant's allegations that the property sold was community property, the return is insufficient to show the executors' power to sell, which, to justify the action of the court, should have been made to appear."

It will be observed that the California court holds that an executor's deed is effectual to convey the entire community interest when the deed is made to raise money to pay debts. This might or might not be the holding of our own court also. But even if our courts should so hold, yet the validity of the deed would depend upon facts not appearing of record, and the title would, therefore, be unmarketable, even though good in fact. Accordingly, it is clear that though an administrator's deed makes good title, yet an executor's deed does not. In order to perfect the title attempted to be passed by an executor's deed, there must be a quitclaim deed from the surviving spouse also.

No doubt an executor's deed is effectual to convey all the one-half community interest of the deceased. If a court sale is had in order to pass the one-half community interest of the surviving spouse, then we have the extraordinary method of resorting to probate proceedings, not for the purpose of passing the title of the dead person, but for the sole purpose of passing the title of the living widow or widower. This is one of the interesting consequences made possible and even inevitable by the decision in *Ryan v. Ferguson*.

This illustration is one of many that might be adduced to show how imperfect in its present state is our law relating to wills, and

especially non-intervention wills. Such wills are formidable in appearance and are pleasing to the lawyer because his client is usually happy to pay an extra charge for having such an instrument drawn. But after the testator dies, the heirs and the executors often fail to find the same satisfaction in the instrument as did the testator who signed it.

In connection with non-intervention wills an interesting question arises as to the extent of the executor's authority to sell real estate. Can an executor sell real estate without an order of court when he is acting under a so-called non-intervention will which contains no specific power of sale? There are two distinct forms of non-intervention wills in common use. According to one form, the testator provides for administration outside of court, and in addition incorporates in the will one or more paragraphs specifically authorizing the executor to sell. By the other form, the testator does not give any authority to sell, but contents himself with general provisions authorizing administration outside of the court. It is wills of this latter class, which may be properly called short form non-intervention wills, which present the question now suggested.

Our statute declares (Ballinger's Code, § 6196) that where the will so provides "estates may be managed and settled without the intervention of the court," and further, (§ 6198) that "such executors who have been heretofore acting under wills dispensing with letters testamentary or of administration, and those who may hereafter act under such wills, shall have power * * * to sell and convey the real and personal property of their testator, where the will authorizes them so to do, without an order of the court for that purpose, and without notice or confirmation of sale." Cf. §§ 6250, 6279, 6292.

It is evident that the sale of real estate is not necessarily any part of the administration of an estate. Most estates are administered and closed without any sale of real estate being made. The ordinary duties of an administrator are simply to collect and preserve the property and to pay the debts and legacies, and if these ends can be attained without the sale of real estate, then such a sale is no part of the administration. It is only when the estate cannot be otherwise administered that the law permits the administrator to sell real estate, and even then in order to effect a sale, he must observe a distinct and special proceeding outlined in the statute.

When, therefore, the statute provides that under a short form of non-intervention will the estate may "be managed and settled" outside of court it does not necessarily follow that the executor may sell real estate. On the contrary the sale of real estate being an extraordinary

step and being no part of the necessary or ordinary course of administration would seem to be wholly outside of the section of the statute conferring general authority upon the executor to administer outside of court. And this view is strengthened by collating this section with other sections of the statutes, which provide specifically that executors may sell real estate "where the will authorizes them so to do."

I am not aware of any decision passing upon the question under discussion. The decisions in *Provident Company v. Mills*, 91 Fed. 435, and *Miller v. Borst*, 11 Wash. 260, contain language which might be supposed to relate to this question, but a careful reading of those cases does not lead to the conclusion that the court was intending to pass upon or express an opinion upon this precise question.

In the American and English Encyclopaedia of Law (2nd ed.), at page 1046, it is said, "Power to sell real estate is not conferred on the executor merely by giving him full and entire control of all the estate, or by authorizing him to settle the estate as he may deem best for the interest of the heirs."

In the case of *Brenham vs. Story*, 39 Cal., page 179, the court considered the constitutionality of an act of the legislature which gave to the administrator of a certain estate, general authority to sell the real property belonging to the estate, regardless of the purpose or object of the sale. The supreme court, in pronouncing the act unconstitutional, used the following language with reference to the powers and duties of an administrator:

"The duty of an administrator is to take charge of the estate for the purpose of settling the claims, and when they have been satisfied, it is his duty to pass it over to the heir, whose absolute property it then becomes. To allow the administrator to sell, to promote the interests of those entitled to the estate, would be to pass beyond the proper functions of an administrator, and constitute him the forced agent of the living for the management of their estates.

"The administrator, therefore, was authorized to sell, not to pay debts; but when in his judgment a sale would advance the interests of those entitled to the estate, the sale was to be in the interest of the heirs as owners, and not to satisfy the paramount lien imposed by law upon the property of the decedent. It is clearly an attempt to use the office of administrator to speculate with the estate of the heirs, and not to administer the estate of the deceased.

"This is plainly beyond the power of an administrator, as such. It is no part of his duty or authority to manage the estate for the benefit of the estate or of the heirs. So far as they are concerned, it is his duty, simply, to preserve the estate until distribution. He cannot make investments for them, or satisfy adverse claims, or sell because the estate would profit by it."

It may, nevertheless, be true that an executor under the short form of non-intervention will have authority to sell real estate in order to

raise money to pay the debts or to meet the expenses of administration, even though he has no power to make such a sale generally. If such be the case, then the validity of any particular sale made by an executor under such a will would depend upon the existence of facts outside the record. If the sale was made to pay debts or expenses, then it would be valid; otherwise it would be invalid. A title thus depending upon circumstances not appearing of record would be unmarketable.

As a rule of practice, therefore, it must be considered as true that under a short form of non-intervention will no marketable title can be made by an executor unless the proceedings for the sale of the property are conducted in court. This rule of practice leads to this curious result: the sale must be made pursuant to court proceedings, and, therefore, under the statute can be made only for the payment of debts and expenses of administration; if the sale is made for such purposes, then probably the executor can make it without any court proceedings; nevertheless, in order to show of record the purposes for which the sale was made, the court proceedings are necessary. The steps by which the conclusion is reached come very close to reasoning in a circle, but carefully analyzed they do not have that fault.

It has been suggested that, even under the long form of a non-intervention will, the power given an executor is incident to the duties of his office and cannot properly be exercised by him except for the purpose of raising money to pay debts and expenses. It is conceivable that a will could be so drawn as to require such a construction, and if so, such a long form of non-intervention will would not differ in construction from the short form, and in the case of a non-intervention will, even in the long form, properly bearing such a construction, no title could safely be taken from the executor.

But the powers ordinarily given in a long form of non-intervention will are so comprehensive as to give the executor a general power of sale, even for the purpose of conversion into money or change of investment, and it is safe to take a deed from such an executor without inquiry as to the precise object which he has in view in making the sale. Such is the common practice.

With reference to non-intervention wills, there is a further very interesting question as to how far the power of sale given in the will to an executor is personal to the executor and how far it can be exercised by an administrator *de bonis non* or with the will annexed. This question I do not propose to discuss. It is sufficient to say that it is in all cases a question of intention to be determined from the interpretation of the instrument as a whole. Being a question of intention, no rule can be laid down which will enable one to ascertain satis-

factorily how the intention is to be ascertained in any particular case. In other words, the whole matter is shrouded in much doubt and obscurity.

The suggestions of this paper may be summed up in four brief sentences:

Give the name of the grantee's wife or husband in all deeds.

Accept no conveyance executed under an attorney in fact, if execution by the principal can be obtained.

Where the deceased was married, accept no executor's deed unless the surviving spouse joins in its execution.

Accept no executor's deed executed under a so-called short form of non-intervention will.

THE EVOLUTION OF STATE LEGISLATIVE METHODS.

By HENRY McLEAN, of the Mt. Vernon Bar.

Mine is a large subject—The Evolution of State Legislative Methods. It would have been better, had it been assigned to a great publicist, rather than to a busy country lawyer. It is difficult indeed to treat the subject at all, keeping within the limits of a suitable paper for this occasion. I will, however, treat it from the standpoint of science, rather than undertake to recount those historical changes that have taken place in the development of legislative methods, and brought us to the system now in vogue in self-governing nations.

I cannot hope to be exhaustive, or even to assemble many of the myriad of pertinent illustrations of the principle I undertake to enunciate. My effort will be confined to a statement—more or less clear—of the scientific, that is, the natural, principles which have clearly manifested themselves in the process of the evolution of free institutions. I shall, also, direct attention to some of the unscientific phases of our present forms of legislation; and, although many years in advance of the reforms that must surely come, will suggest some changes.

It may be safely stated as a fact, that legislation, to become a harmonious system of jurisprudence, must be constructed and given form by able men, qualified by years of study and training to recognize the trend of society, and able to lay down a system of rules and regulations that are practical, and suited to the wants and necessities of the people. Until comparatively recent times, this was enough, and embraced the whole duty of the law-giver; but, since democratic ideas have dominated the world, this is not enough; these rules must be submitted, in some way or other, for the approval or rejection of the people.

Our system of state legislatures, and most of the schemes for legislation by the people, about which we hear so much of late, are fatally defective in the cardinal principle upon which the great systems of jurisprudence have evolved. They presume that the people, the great masses, are qualified to construct laws applicable to the conditions of society, when, as a matter of fact, they are not, and the affairs of life are becoming more and more complex each year, making the task of legislation far more difficult. The fact is, and it should be readily and willingly recognized by all, that constructive talent in the human race

is rare. The myriads of people go on, and on, doing what is laid out for them to do by the few constructive minds of the world. This is true in literature, art, social life, business, government and in jurisprudence.

To the student who looks upon the world as the product of evolution, the most striking fact of history is, perhaps, that two systems of jurisprudence have been evolved, by different peoples remotely separated in climate, in country, and in time; yet so perfect that they have spread throughout the world, and been adopted by almost all nations. The Roman jurisprudence is the law of Italy, Greece, Spain, Portugal, Switzerland, France, Germany, Belgium, Holland, Denmark, Norway, Sweden, Russia, Hungary, Japan, Ceylon, British Guiana, South Africa, German Africa, French Africa, Mexico, Central America, South America, Philippine Islands, Siberia, Scotland, Quebec and Louisiana. The English system is the law of England, Ireland, Wales, America except Louisiana, and Canada except Quebec. Only in the Mohammedan countries of Europe and Asia, in China and in India is there any considerable body of laws drawn from a source other than these two systems. The universality with which these systems of jurisprudence have been adopted attest their fitness to meet the wants of men. The methods of legislation by which these systems were constructed were so nearly alike, that, when once clearly discerned, they must be accepted as the true scientific methods of legislation. Permit me to attempt to state them.

The Roman jurisprudence is the work mainly of the praetor. The praetor stands out in the Roman jurisprudence as its central figure. He was aided by the teachers of the law, frequently styled the unofficial jurists, and by the juris-consults, whose duty to the triers of facts was similar to that of our attorney-general who gives legal opinions to the other officers, and by the various magistrates. True, some of these laws were submitted to the people by a referendum, such as we use in the submission of constitutional amendments. But the main point is that that magnificent system of laws that now governs such a large part of the world was constructed by men especially trained in the law and of great constructive ability.

The English system, from the beginning, is mainly the work of great judges, chancellors and text-writers. The chancellor of the great court of equity stands out conspicuous in English jurisprudence as the praetor does in the Roman. An eminent English judge, Lord Justice James, said that the easiest way to codify the laws of England would be to enact a number of leading text books into statutes, and he named Jarman on Wills, Chitty on Contracts, Williams on Executors, Lindley

on Partnership, Smith's Mercantile Law, Sugden on Powers, and others.

So plain is the truth that a system of laws to be of value must be framed by experts, that it seems only necessary to state the fact, for it to seem trite and commonplace. In spite of this plainness and in the face of history, the American people have failed to recognize that it requires ability to frame laws. In our system of state legislatures we have placed a premium on ignorance and venality, and established a system by which it is impossible for able men to give their best thought and effort to the scientific construction of legislation.

In modern times a highly civilized people are not content to permit the laws which are to govern them to be arbitrarily promulgated. America and all European nations, even Russia in this hour of trial, demand the right to legislate and in some form have their laws approved by the people themselves, or by their representatives. This is the essence of democracy.

The chief error of democratic government is the attempt to lay upon the incompetent masses the duty of performing functions which they are wholly unfitted to perform. This, too, is the chief weakness of the socialists, whose plans and specifications for their government call for the gold, and ivory and marble of character, but the practical builders find themselves unable to furnish this material and must take brass, and celluloid and limestone.

The true scientific principle then, according to which legislative methods have evolved is, that forms, rules and regulations have been devised by men of great ability, and by them offered to the people, and, if suited to their wants and necessities at the time, adopted by them.

This truly democratic principle is so plain when stated, that it is readily recognized as one of nature's laws, as much as are the laws of gravitation; or, that water will seek its level. It is seen in the inventor—a great mind—who works for years to perfect his machine; he offers it to the public for acceptance or rejection; if it meets the requirements of the hour it is adopted, otherwise the public rejects it; the merchant—the great mind in his department—collects his wares and offers them to the public, if acceptable his business flourishes, if not he goes into oblivion. The same is true of a writer of a book, the painter of a picture, the publisher of a paper. The same broad principle is the foundation of all business, all jurisprudence, all statecraft. It has certainly been the principle in accordance with which all valuable legislative methods have evolved. The century and a half that has just passed has witnessed the sovereign power of most nations pass from the monarch to the people. There remains, of course, speaking in very general terms, only the Russian people, China, India, and the Pacific

Islanders. Until now the chief end of government has been to define, establish and secure the political rights of men. This has been done so effectually that none but the ignorant and uninformed fear the excesses of political tyrants.

Today we witness the world-wide act in the drama not of nations, but of mankind changing from a struggle for political rights to a far more difficult task of adjusting the industrial affairs of men to their needs and necessities. No man in any nation has so firmly grasped the full meaning of these conditions as the President. With the sublimest view of the industrial conditions of the race, and with the most practical judgment of what is best to do for the moment, he has directed the thought of the age to the new things that the people through legislation, must master. He has realigned the thought of the nation. It is not now political, but industrial problems with which they are engaged. His powerful individuality, his popularity and his courage have so changed public affairs that it is altogether impossible to focus the thought of the nation upon any but industrial problems.

The work then, to which the legislation of the country, both state and federal, will, from this time on be directed, is the adjustment of industrial rights and conditions. The legislation of the future must deal with monopolies, strikes, lockouts, boycotts, railroads, manufacturing plants, and the multitude of things that go to make up our industrial life.

If it required talent, courage, honesty, knowledge, zeal, in fact, a high order of patriotism, to establish government by the people, the solution of the problems of today call for the very best the nation can furnish. When we fully recognize these conditions and turn to our instruments of legislation, we may well be alarmed. Of all the impotent institutions that have found a place in free governments our state legislatures are the most stupid and venal. Not a state in the Union but has been disgraced, over and over again, by the dense ignorance and shameless corruption of its state legislature.

In the organization of these legislative bodies, the vital principle upon which a sound jurisprudence can be evolved has been ignored. Instead of seeking the ablest men for these places, men having at least some knowledge of what the law is, the custom, especially in rural districts, is to pass the "honor" around among men who never dream that honor consists in doing well the thing one is qualified to do. It is a waste for me to spend time in characterizing this monstrosity that has found its way into our institutions. If the state legislature as now chosen and as now constituted, is so utterly incompetent to handle the simple questions before it, what of the future?

We see the efforts of the people to meet the existing conditions manifested by the organization of railway commissions, tax commissions, commerce commissions, code commissions, and scores of other commissions; and now, when any important piece of industrial legislation is demanded, the stupid legislature has barely enough wit to provide a commission of able men to perform its functions, and it returns to the more congenial, and often profitable occupation of electing a United States senator.

If the modern state legislature is incompetent to deal with the problems of the day, the proposal to do away with all legislators and have the people originate all legislation by petition, is undiluted nonsense. The remedy for existing evils is to be found in applying the natural law, that great tasks must be intrusted to able men only. The state legislature as it now exists should be abolished, and the duties of legislation should be entrusted to a body of men like the members of our supreme court. What a blessing it would be to the people of this state if they could but know that their legislative interests were in the keeping of such a body of men. No breath of scandal attaches to that tribunal; no sale and barter of decisions by those men is ever hinted at. Day after day, week after week, month after month, and year after year, they toil on at the most laborious tasks, on small—shamefully small—salaries, prompted by the high purpose of discharging their duty creditably.

Suppose such a body of men should be constantly at work framing the laws, going into all of the details of legislation, what would be the result? In ten years we would have a system of state jurisprudence that would live through the ages as has Roman jurisprudence. All of the states that are able to free themselves from the political swash-buckler and buccaneer would follow the example. What an honor it would be to members of the legal profession to occupy places in such a legislature. The nine legislative sessions of the state of Washington have cost \$711,549.48. A body of men like the supreme court judges, working with the same industry, the same zeal, the same devotion to high ideals, would have done the work of all the legislatures and all the commissions, and done it inexpressibly better, at one-half the expense.

Under such a system, it would probably be necessary to refer many laws to a vote of the people as we now refer our constitutional amendments; and, to prevent tyranny, and to give free scope to the individuality of men, some way of initiating laws independent of the legislature, might be advisable. It would conform to the first principles of free government, and open the way for the evolution of our jurispru-

dence in a smooth, easy and natural way, and provide a competent tribunal to deal with those great industrial questions that must once be settled by the people of the commonwealth.

As stated in the beginning, the remedies suggested in this article are in advance of present public opinion. They are given out rather to attract the attention of the bar if possible, to the fact, that if the leader of public opinion, ought to consider the conditions as they exist and strive to remedy the evils.

In the course of time the law of evolution will prevail; the fit will survive, and the people will recognize the value of able men to perform important tasks. A government is just as free, just as perfect, just as suited to the wants of the people as they have ability to conceive and courage to demand.

LOG BOOMS ON NAVIGABLE RIVERS.

By J. B. BRIDGES, of the Aberdeen Bar.

Mr. President, Gentlemen:

The topic which has been given me for today is one that can hardly be made interesting by its manner of treatment, and if there is any interest in it, it must grow out of the many nice, difficult and complex questions of fact and of law which are inherent in it; and yet it seems to me that the question, effecting directly as it does the greatest industry of the western portion of the state, is one entitled to serious consideration.

It must at once be conceded that the logging and lumbering industries of the western portion of the state are, by all odds, the most important we have, and are likely to be and remain the most important we shall have for a good many years to come. In the cities of Aberdeen, Hoquiam and Cosmopolis, on Grays Harbor, which three cities adjoin one the other, the output of lumber is immense. The average daily cut of the mills in these three towns is in the neighborhood of two million two hundred thousand feet board measure; or upwards of thirteen million feet for each week of six days; or upwards of fifty million feet for each month of twenty-six days; or supposing the average quarter section of land will cut five million feet of timber, we are, in the cities just mentioned, stripping monthly about ten quarter sections or two and a half whole sections; and yearly we are stripping in the neighborhood of thirty sections of timber land; or in the neighborhood of ten years, at the present rate, we will cut the timber from about three hundred sections of land. And yet it is estimated that it will take from fifty to one hundred years from this time within which to cut, at the present rate, all of the timber which is tributary to Grays Harbor. These figures are astounding and almost unbelievable, and yet what is being done on Grays Harbor with relation to the cutting of timber is being done to a greater or less extent all over the western portions of the states of Washington and Oregon.

Throughout the state there are dozens, yes, hundreds I may say, of comparatively small streams which are suitable chiefly for logging purposes. Many of these streams have their source far inland, and wind their tortuous way through immense bodies of untouched timber lands and finally empty their waters into tide water. These streams are

from one hundred to three hundred feet in width in tide water. They are navigable to small boats only to a small and almost insignificant degree. There are a few farms on the stream and probably a small amount of fishing, and these farmers desire at times to navigate the stream with row boats and scows and other small boats in the ordinary conduct of their small farms. It may safely be said that ninety per cent of the commercial value of these small streams is and for many years must continue to be, that of the logging industry, and that ten per cent is that of navigation by boats.

In order to make these streams of any practical value to the logging and timber industry, there must be, in the upper portions of the streams, dams for the purpose of creating artificial freshets for the purpose of driving logs down to tide water, and there must be located in tide water a boom structure for the purpose of catching these logs and holding them and sorting and rafting them ready for the saw mill. The very nature of the streams themselves, and of the climate of the country, requires that, for a large portion of each year, the stream be practically given up exclusively to the logging industry. These streams are, by our statutes, made public highways, and innumerable questions arise between the boom or the driving company on the one side and the riparian owner and the navigator on the other side. If the boom company suffer the logs in its possession to strike the banks of the stream and knock off a little earth, the riparian owner immediately is heavily damaged, and seeks either to enjoin the operation of the boom or demands damages. If because of the immense and unusual quantity of logs coming down the stream upon winter freshets the boom should be overfilled and the river closed to navigation for a few weeks, the farmer desiring to navigate the stream with his boat immediately demands an open way, and yet you cannot give it to him.

In building your boom you use one bank of the river as one side of your boom and the riparian owner immediately seeks to enjoin you from so doing, and yet you use nothing but the bank and cannot operate your boom without so doing. The riparian owner immediately complains that he bought his land upon a navigable stream which is a public highway, and that he is entitled at all times to get to and from that public highway, and yet you cannot maintain your boom and give him this privilege. When the river is full of logs, stopped because of the boom, the person who desires to go to the mouth of the stream in his row boat demands of you that you clear the stream for him, and contends that the stream is a public highway, and that under the law of the land he is entitled at all times and at all seasons to travel that highway unimpeded and unobstructed, and yet you have not been re-

sponsible for the excessive amount of logs that have come into your boom and blocked the stream and it is impossible for you to operate your boom and grant his request. If you are a driving company, and the river cannot be successfully used as a logging stream at certain seasons of the year, you build dams in the river and thus, by holding the water, create artificial freshets and are thus able to drive down the stream hundreds of thousands of dollars worth of saw logs which otherwise could not have been gotten out; but the owners of land bordering upon the stream for ten, twenty or thirty miles below your dams seek to enjoin your operation or to hold you liable in damages because, perchance, this artificial freshet threatens to wash away small portions of the banks of his lands. If you are a driving company, and without any fault of yours, logs hang up at some point in the stream and thus cause the adjoining land to be overflowed or the banks to be more than usually washed away you immediately have a suit against you for damages, and there are a hundred like questions and legal difficulties which arise between these parties. The one party contends always that you have no right under any circumstances to wash away the banks of his lands however small it may be; that you have no right under any circumstances, whether unavoidable or not, by means of your boom or your driving company at any time to block any portion of the stream to the ordinary boat navigation; that the stream is by the law of the state a public highway, and that all persons shall have at all times an absolute right to the use of the stream.

Many questions, chiefly other than these I have just enumerated, have already been decided by our supreme court. Many controversies have arisen and many controversies have found their way into that court and yet has only the court merely touched the whole problem. The court has already decided what is a floatable stream and what is not a floatable stream; in what kind of a stream the riparian owner owns the banks and bed of the stream and in what character of a stream the state is the owner of the banks and bed of the stream; it has decided that a private individual or a private corporation has no authority or right to hold or boom logs in one of these streams; that no private individual or private corporation has a right to create artificial freshets for the purpose of driving their logs to market; that no person has the right to go upon the banks of the stream for the purpose of assisting in the driving of logs down the stream. And many other questions has this court decided and yet, as I said before, the court has hardly touched the many legal questions that arise in these controversies.

It appears to me that lawyers and some of the courts cling too closely to the old common law doctrine affecting navigable streams. It ap-

pears to me that we are too afraid of breaking away from the ancient tenets concerning navigable streams and too slow to make and decide laws in accordance with the necessity of the circumstances. It was announced by the very early English writers that "riparian proprietors were entitled to have the stream which washed their lands flow as it is want by nature without material diminution or alteration." Such law was announced and laid down as affecting the streams of England where there was but little or no mining; little or no timber and little or no irrigation; where the whole burden of the stream was to carry navigation in its broader sense. Such law came down to this country as part of the common law of England, and it has been difficult for us to break away from the old, tried and established principles governing such streams. But in an early day bold men came to the west to mine the rich veins of ore that were to be found there. The country was new. Circumstances and conditions to a large extent made the law. They found it necessary to take much or all the water from the streams to be used in their mining operations, and so out of such necessity came the law on all the Pacific coast that miners may take from the stream water for mining purposes.

In the old New England states, the old English doctrine could very well prevail, but men seeking homes farther west came upon the arid lands which were richly fertile if the water could be brought upon them. Necessity justified them in taking large quantities of water from the streams for the purpose of irrigation, and this necessity again broke the old and staid common law doctrine, and we have irrigation laws all through the west. Very slowly have the lawyers and courts been willing to break away from the old ideas with relation to the navigable streams.

In Western Washington we have no need for irrigation and we have little need to use the waters for mining, but we have a greater need in using the streams for logging purposes. In no place in the world is there such a crying necessity to break away from the old and staid doctrines with relation to streams, as there exists in Western Washington. Nowhere are great industries so dependent upon the use of the streams of water as they are in the state of Washington; nowhere as in the state of Washington is there so much need that the hard and rigid laws with relation to these streams should be mellowed and made subservient to the interests of the loggers and the lumbermen.

As a rule necessity makes law. As a rule law should be of such character as will be of the greatest benefit to the greatest number of people. In all the states in the Union there is not one so dependent upon its waterways as is the state of Washington, and yet, in my judgment,

there is not a timbered state in the Union whose laws are less favorable to the logging and lumbering industry than they are here. I repeat that the law and its enforcement should be governed by the necessities of the situation.

Under the laws as we have them in this state today, the logging and lumbering industry—the greatest we have, is in so far as the streams are concerned, hampered, checked and restrained in a manner that should not be. Nature has given us immense forests; nature has made to run through these forests innumerable streams of water to carry these forests to market, and yet it appears to me that by our laws and their enforcement the very wealth and advantages which that nature has given us are being unjustly and improperly cramped.

The men who buy their lands upon navigable streams such as these I have mentioned do so knowing the conditions. They know that in the nature of things the stream must be burdened with the rich harvests which nature has grown on the banks of the stream. They have certain rights and easements in the water by virtue of their contiguity thereto, but such rights and easements are of necessity burdened with greater and more important rights and easements. The great industry supporting the major population of a great state should not be hampered because perchance and incidently the natural pursuit of that industry will entail upon a few people a hardship. It is infinitely better that the few be made to suffer or be hampered in their affairs than the great many.

I believe that upon those streams in the state which are chiefly valuable for the floatage of saw logs, boom companies and driving companies should be given greater privileges and should be less handicapped than they are at present. If the necessary result of the operation of a boom is to shift the currents of a stream; is to wash away small portions of the lands or the banks, the boom should not be held as doing an unlawful thing and be mulcted in damages therefor. If the necessary result of the prudent and careful operation of the boom causes, for a time, ordinary boat navigation to be blocked, the boom company ought not to be held liable therefor. If the necessary result of using artificial freshets is to wash away a small amount of the land I believe there ought to be no recourse and no injunction and no damages therefor. These companies should be required at all times to exercise a high degree of care and diligence, but they ought not to be held responsible for consequences which are the necessary results of the performance of their lawful and necessary acts.

I believe it is the settled law that the state in which a navigable or floatable stream exists, has the absolute control over the navigation of

that stream in the absence of the government of the United States exercising its jurisdiction. I believe it is the law that the state may authorize certain streams to be used wholly and exclusively for logging purposes; that it may, if it choose, on certain streams cut out altogether navigation by boat; that it may control the navigation of those streams as its legislature deems best and most profitable to the people of the state.

One illustration of this doctrine will be sufficient. The legislature of Pennsylvania authorized the city of Philadelphia to build a bridge across the great river which runs through that city, and provided that such a bridge need have no draws in it. The river where the bridge was to be built was and had been for a number of years, navigable. One person had for many years owned valuable wharves above where the bridge was to be built. Steam and sailing vessels had for many years prior thereto been in the habit of coming to his wharf. If the bridge were built these vessels could not get to his wharf and he would be greatly injured and damaged. The court held that the legislature of the state was the best judge as to whether greater interests would be served by such a bridge than by one with a draw and one which did not interfere with the navigation of the stream. The court refused to enjoin the construction of the bridge.

The members of the legal profession are exceedingly cautious and conservative. It is with difficulty that they can bring themselves to break away from the old rules of law laid down in the books of their first reading. In many instances we fail to keep up with the times. We are too much disposed to make the law that was properly applicable to the old Virginia road wagon apply to the automobile; we are too much inclined to make the law which was properly applicable to the old horse streetcar govern the swift electric cars of this day, and so are we, in my judgment, entirely too much disposed to follow, with great tenacity and implicitly, the old doctrine with relation to navigable streams.

In a country like this I believe that if, at certain seasons of the year, it is necessary for a private individual or a private corporation to create artificial freshets for the purpose of driving their logs, they should be permitted to do so, so long as they confine their operations to the channel and banks of the stream. It must not be forgotten that the floatage of logs upon these streams is a very important part of the navigation of the stream; the maintenance by either private or public corporations or private persons of dams in a floatable stream is nothing more or less than facilitating the navigation of the stream, and it seems to me that all damages resulting from such artificial freshets

should be held to be not recoverable so long as the artificial freshet is kept within the stream itself and is handled with reasonable care.

The whole matter of using these streams for floating purposes should be governed, it seems to me, by the law of negligence or want of negligence. To say that a log driving or booming concern must not obstruct the stream, and must not, under any circumstances, interfere with ordinary boat navigation, is to deprive the stream of its greatest use, and is to authorize the handling of logs in a stream and yet throw such burdens upon such use of the stream as to practically deny its use.

If it is not within the power of the court, in the interest of a great industry and in the interest of the great majority of the people, to mellow and soften the old harsh laws with relation to navigation and navigable streams, then I believe that the legislature should pass laws which will accomplish that purpose.

In certain of the great timbering states, such as Wisconsin, the legislature gave over certain streams absolutely and exclusively to the logging industry and thus was that industry greatly prospered even though the law may be a little harsh upon a few individuals; and I believe it would be well for the legislature of this state to make many of the streams of this state exclusively floatable streams—exclusively streams to be used for logging purposes. I can see no reason, under the constitution of this state, why such legislation could not be had, and if it were had it would put an end to an immense amount of litigation which, under the laws as they are now and as they are construed to be, will continue and will increase in volume as the logging business increases. I believe that such laws would be immensely beneficial to the great majority of the people, and the logging industry would be infinitely more benefited than the few people, who have some need to navigate these streams by boat, would be damaged.

MARITIME LAW.

By JAMES M. ASHTON, of the Tacoma Bar.

Mr. President and Brethren of the Bar:

In American maritime jurisprudence, there exists a comparatively unoccupied field. I refer to the history or genealogy of our maritime laws. The word comparatively is used, as all American writers have devoted much labor to the subject; but after all their works are chiefly valuable as digests of established principles, rules of procedure, the methods and forms of practice arising therefrom, and the like. Mr. Benedict has relieved this situation to some extent, and manifestly all he could in a work chiefly confined to the requirements of the active practitioner.

One, of course, can merely glance at this field in a limited paper of this character. I have thought that this humble effort to facilitate such a glance may give the key to brethren at the bar desirous of entering and investigating this most interesting region of our law. All good lawyers think for themselves. They want to know the reasons for a law and the purposes of its origin.

The laws of the sea, and particularly those of the high seas, as contradistinguished from the territorial sea of each country, are essentially international laws. The busy marine lawyer must watch and pursue with diligence any innovation in modern treaties or relations between nations which tend to vary those ancient and mediæval doctrines common to all countries.

In addition to this, every active practitioner of maritime law must keep reasonably well informed as to the law of each seafaring nation. The best living authorities, both American and foreign, will now, I think, concede that in all controversies in the maritime courts of a nation between the vessels, citizens, and subjects of another nation, the law of the flag of such vessels, or beneath which such persons sail, shall be the law of administration.

I believe it will now be conceded, and if not it should be conceded, that in all controversies between foreigners we should preserve to them the full benefit of their laws, adopting only the law of the forum when the subject-matter or point in question is not covered by the law of the land whose properties or people are concerned. Aside from international comity, the spirit of fair play, the law of liberty, the

enlightenment which inspires us with justness towards all mankind, demand that we be generous and upright in this regard. Hence it is that the laws of each nation of the earth, possessing or in contact with a commercial or military marine, enter into the subject before us.

This great zone of law, both international and local, cannot be satisfactorily explored without keeping in touch with its embryo and growth. To do this one must follow the walks of navigation and commerce from their inception to the present day, paths which while working out the progress and destiny of the government of the seas, are nevertheless saturated with the blood of all nations, shed for the gratification of commercial avarice and inhuman national pride. When we have established a respectable merchant marine, will it not be possible for America to advance upon a plain which will insure the purposes of God in creating the waters, namely, that the empire of the sea shall be enjoyed with universal freedom by all nations.

Let us now briefly run down the paths of commercial and nautical growth above referred to. In doing so we must keep constantly in mind the origin and development of maritime law in connection therewith.

The precise origin of navigation is enveiled by antiquity in darkness and fable. Those given to mythological fancies have attributed the invention thereof to Minerva. The poet Gessner has in his "First Navigator" delighted the hearts of the aesthetic and the romantic by placing this laurel upon Venus, and the French poet Esmenard has introduced this fiction into his poem "*La Navigation*."

We, however, are here called upon to deal with facts. Eusebius, and the Roman writer Vitruvius, are among the ancients who sustain the Phoenician historian Sanchoniathon in asserting that Ousous, one of the first heroes of Phoenicia, was the first to expose himself to the water, using for such purposes the trunk of a half-burnt tree. Beyond question the origin is with the Phoenicians, who claim an ancestry of over 30,000 years prior to the Christian era. We know from Herodotus that the earliest transports from Tyre and from Sidon, whatever they may have been, were relied upon by the most ancient nations to distribute the wares of Egypt and of Babylon to the remainder of the then known world.

From the dug out tree trunk the ancient Greeks as well as the Phoenicians developed to the idea of constructing floating woods of various pieces which they fastened together with wooden pegs and strings cut from skins. This must have been well developed in the days of Ulysses for Homer, at the 344th verse in the Fifth Book of the

"Odyssey," tells us of the raft built by that warrior in the island of Calypso as follows:

"So large he built the raft; then ribbed it strong
"From space to space, and nailed the planks along;
"These formed the sides; the deck he fashioned last,
"Then o'er the vessel rais'd the taper mast,
"With crossing sallyards dancing in the wind,
"And to the helm the guiding rudder joined.
"Thy loom, Calypso! for the future sails
"Supply'd the cloth, capacious of the gales.
"With stays and cordage last he rigg'd the ship,
"And roll'd on levers, launched her to the deep."

The nautical understanding of ancient mankind became so enlarged by the improvement and development of tree trunks and rafts with which they worked along their shores and between the neighboring islands that they were finally led to the construction of galleys, with many ranks of rowers, and it was then that they unquestionably ventured to the open sea. The piratical nature in primitive man and the inherent desires and cupidity of all men created commerce by sea necessitating laws to avoid chaos and turmoil in connection therewith.

The historical contact of Phoenicia with the Assyrians, Egyptians, Chaldeans, Persians and Greeks, all in turn indicate that, whether at war or in peace, the Phoenicians must have had well established rules and customs in the government of their merchant and military marine. Unfortunately ancient historians and mythological composers, both of prose and poetry, throw but little light upon any fixed principles or code in connection with this ancient commerce. The Rhodians were, however, the first to excel in the systematizing of maritime laws, and as their island was frequented by the Phoenicians in their trade with the Aegean it is more than probable that the excellent laws of Rhodes were in a large measure inspired from maritime association with the Phoenicians.

Most modern writers, including Benedict, assert that the laws of the Rhodians are the most ancient code of maritime law. Its date is approximately 900 years before Christ. We learn, however, from that great ancient historian, Thucydides, that the island of Aegina in the Salonic gulf and the island of Crete each in turn held the empire of the sea and regulated their commerce and marine with excellent laws prior to the time when the island of Rhodes became potential, and covered with her commerce and her galleys all lands and waters known to the Mediterranean world.

The Rhodians were, however, the first known maritime power to pursue a humane and generous policy towards other nations desirous

of following the sea. They became the protectors of nations they might have enslaved, and yet their maritime empire was more absolute than any other nation of antiquity. Other ancient nations imagined themselves masters because they were tyrants of the sea. The shrewd and daring Romans espoused, obtained, and took care to retain the friendship of the Rhodians. Whether we consult the Pandects, the Institutes, or the Digest of Justinian, promulgated many hundreds of years after Rhodes was empress of the seas, it will be found that the inspiring origin of the civil law, as contained in the Books of Justinian, can be traced, as far as maritime rules and principles are concerned, to the laws of Rhodes.

As early as 730 years before the Christian era, Persia possessed a military marine that flourished during the days of Darius and Xerxes. The Persians had 600 ships at Marathon and 300 at Salamis. Their defeats by the Greeks in both of these great battles destroyed their maritime power.

After her brilliant victories over the Persians, Greece became the empress of the sea. She has given so much intellectual life to the modern world, in both science and art, it would be fair to assume that she should contribute a full quota of maritime law. The maritime laws of Athens and Sparta seem, however, to have been those of Rhodes. This is notably so after her war with Persia and until her empire of the Grecian seas was surrendered to the Macedonians. The conquests by sea as well as by land of the great Macedonian King Alexander the Great are known to us all. The Rhodian laws were evidently his guide in maritime commerce, as they were of the Egyptians, the Carthaginians and the Romans. Carthage became the greatest maritime commercial center of the ancient world. It has even been suggested that the Carthaginians explored as far as this Western Hemisphere, but this is a vague conjecture resting upon no reliable authorities. The downfall of Carthage came by reason of the same mistaken policy which imbued all ancients, and the most modern maritime powers, namely, the ambition to arbitrarily rule the seas. This ambition brought upon her the vengeance of her equally ambitious and haughty rival, Rome, and through the medium of the Punic wars the Romans made the Carthaginians their vassals. Then commenced the rapid growth of Roman commerce by sea, and the coextensive forming and development of all branches of the civil law bearing upon maritime rules and principles.

Rome ruled the sea not only within the pillars of Hercules, but when Caesar dominated the government of Gaul, the Romans caused ships to be constructed stronger than ever before and ventured there-

with upon the navigation of the Atlantic ocean. We learn from Plutarch's life of Cæsar that he was preparing to further increase the marine of Rome, and to further perfect its laws, when he fell in the Roman senate beneath the daggers of his assassins.

Before considering the maritime laws and statutes of modern nations who claimed, and for a time held, the empire of the sea prior to the discovery of this new world, let us briefly consider maritime law as left us by the ancients above referred to. Bear in mind we are still in the galley age with no accessories to the oars other than primitive sails and rigging. This continued almost down to the discovery of the mariner's compass to which I will refer later. Bear in mind, also, that in the early periods of navigation and commerce, the limited number of laws were by reason of the limited commerce. The growth and development of marine law was then, has since been, and will continue to be proportionate between the two. Many of the ancient maritime laws remain as mere local ordinances, and obsolete with us for practical purposes. On the other hand a large number of them and notably the Rhodian and Roman laws have, by reason of their great wisdom and unquestionable equity, become a part of the common maritime law of all nations. As above indicated Rome must yield to Rhodes the glory of creating her reliable maritime law. The Rhodian laws were held in such high veneration by the Romans that they were referred to by Cicero and other eminent Roman senators and lawyers as such, without having their names changed to the laws of Rome, which change would have been in line with the central absolute policy of that nation. Augustus legalized them by giving them the formal sanction of Rome, but before the reign of that emperor they were held in such high veneration that they were not required to be engraved upon the twelve tablets, but were filed, referred to, and adopted in their original condition. We today without thinking of, and possibly without being conscious of, the fact, are constantly applying the laws of Rhodes and Rome. For example the law of *Collationem* as contained in chapters 33-39 and 40 of the Rhodian laws, and as adopted by the Romans in section 1 of law 2, and laws 3 and 5 in title two of livre 14 of the Digest *ad legem Rhodiam de jactu* is identical in principle with our present law of *general average*. The right to jettison and to recover contribution therefor by reason of tempests, which were much more injurious to them by reason of their frail and undeveloped crafts, was general among the ancients. Contracts similar to our Bottomry and Respondentia bonds were also necessarily practiced by them. Barratry and thefts of all kinds seem to have been common among the Roman sailors and the Praetors made special provisions covering punishment

therefor; the right of action *ex quasi delicto* was also provided and in such an action the master and owner could be condemned to pay double the value of the article stolen. The Roman laws gave actions for single, double, triple and quadruple damages in such cases according to the circumstances. (See title 6 in book 4 of the Institutes). Tribonian, an eminent Roman lawyer, and the favorite and counsellor of Justinian, was employed by that emperor to digest and codify all Roman laws. This he accomplished with the aid of nine other lawyers in three years time. The fourteenth book of their digest speaks of maritime contracts in seven laws, two published by Ulpian, three by Paul on the Edict, one by Gaius on the provincial edict, and one by Africanus taken from the eighth book of his questions. In this last it is provided that the *exercitor navis* or owner of the ship who receives all her earnings for his own benefit, shall be condemned by the praetor to fulfill all obligations contracted by the *magister navis* or master of the ship whether they concern freight, ship or cargo. This is the same and it is even broader than all our modern *in personam* remedies. If the scope of this paper would permit, many similar instances could be given. Seizures of the ship and goods were permitted to enforce compliance thereby practically covering all of our modern remedies *in rem*.

The Emperor Justinian was undoubtedly the restorer of Roman jurisprudence, and his works executed by Tribonian, Dorotheus, Theophilus and other learned lawyers are comparatively modern, and almost as accessible as other maritime authority. He published his code in the 529th year after Christ and again in 533 and the last edition of his Digest and Institutes in 534, the novels or addenda thereto being published from time to time until 565. These are all well preserved to the present day. Their worst fault is their prolixity. Nearly 100 years before Justinian, the Theodosian code was published by the Roman Emperor Theodosius II and it is full of maritime law, most of which was adopted by Justinian. Theodosius laid down the laws governing navigation on the Danube and the Rhine. He also established law pertaining to public transports, sailor's wages, shipwrecks, salvage and the like. The Roman emperor Basil published the Basilica in A. D. 877 in forty books. He covers nearly all of the Justinian marine laws, and the eighth title of the Basilica contains forty-eight chapters covering the laws of the Rhodians as they had been preserved by the Greeks and Romans for nearly nineteen centuries. These were continued by the Emperor Leon, the successor to Basil, and were in vogue down to the decline and fall of Rome as a world power.

While the ancients above referred to were developing maritime law

in the southern seas of their known world, the Barbarians adjacent to the Baltic and North Sea must also have had their laws to control a merchant marine. Many writers are in doubt as to this. There, however can be no doubt of their having built and navigated ships. Tacitus, who lived from the fifty-fourth to the one hundred and twenty-fifth year after Christ, and who was the greatest and most reliable of Roman historians, informs us that the *Sueones* (the Latin for the Swedes) were surrounded by the seas and were powerful on the ocean, and that their vessels were even better and more easily navigated than those of the Romans for the reason that they had double prows so they could touch the land without being turned about. (See *Tacitus de Maribus German*, cap. 44.)

The modern ports and states which enjoyed the empire of the sea and established marine laws before the discovery of America were in turn Venice, Genoa, Pisa, The Goths, Vandals, Saracens and Normans. In 1096 and thereafter the Pisans, Genoese, and Venetians were all instrumental in furnishing ships to the princes and religious fanatics of Europe for the purpose of outfitting and pushing the Crusades. Since the discovery of America, Portugal, Spain, Holland, France and England have in turn asserted supremacy upon the seas, enacted many maritime laws, and given us many able writers upon international and maritime law. The student is referred to the marine history of these states and nations for much information and knowledge bearing upon the maritime jurisdiction of the United States. In addition to the maritime laws of other European countries and ports, to which I shall presently refer, we find the laws of the Romans and Rhodians running through them all.

In a paper necessarily confined such as this I can only hint at the sources of information upon this most interesting and imperfectly developed subject. I am devoting most of my time to that ancient realm, and to those remote sources of maritime law which by reason of modern maritime invention and advancement are rapidly passing beyond the memory and reach of men.

The comparatively modern marine codes or systems of maritime law consist of the *Consolato del Mare*, the Amalfitan laws, the laws of Oleron, Wisbuy, Marseilles, the Hanse-Towns, those of Venice, Tuscany, Genoa, Sardinia, Naples, the Ottoman laws, the laws of the northern states of Europe, and the maritime laws of Russia, Denmark, Sweden, Antwerp, Portugal, Spain, and Belgium, Holland, and The Codes of Italy and the German empire and the laws of France and England.

Of these the most instructive, and those of any considerable importance to us in America is, *first*, the *Consolato del Mare*. This compila-

tion has 294 chapters. The time and place of its origin are unknown. Grotius and Marquardus fix it during the Crusades, and consider it was framed by order of the ancient Kings of Arragon. Others equally eminent attribute it to the Pisans. I favor this later view as Pisa was very high in maritime affairs when the *Consolato del Mare* was, in the eleventh and twelfth centuries, adopted as recognized maritime authority by all Europe. They in a large measure followed the Rhodian and Roman laws.

Second. The laws of Oleron. These are sometimes attributed to the English King Richard I. This is an injustice to the French. Selden, the great English writer on maritime law, is responsible for it. (See p. 462, Cap. 24, Book 2 of Selden's *Mare Clausum*.) Selden caused Blackstone to make the same mistake. Eleonora, a French lady and the mother of Richard, created the *Role d'Oleron*. She was the Duchess of Guienne and established those laws before she married Richard's father, King Henry. They are called after the island of Oleron, but six miles from the French coast near Rochelle. Eleonora, when in the Holy Land, observed how the *Consolato del Mare* was respected throughout the Levant. She therefore resolved to have the marine rules and judgments of the West compiled as law, and it was done before she became an English queen. It was published in 1150. Richard did not come to the throne of England until 1189. So it is impossible for either Selden or Blackstone to be correct. The universal eminence of these authorities has made the error a very popular one. It should be set right as the *Jugement d'Oleron* should not be considered from a standpoint of English law. It is French law, following the civil law, largely taken from the *Consolato del Mare* and they in turn from the laws of Rhodes and Rome. Further, they relate solely to navigation in the sea of Gascogne from Bordeaux to Rouen, without referring to the Irish sea or parts of the ocean which England improperly regarded as her exclusive domain. The greatest cast of English law which can be given to them is that Richard subsequently introduced his mother's laws into England, but this cannot justify American lawyers in referring to them as original English maritime authority, which is continuously being done in our courts.

Third. The laws of Wisbuy, called after a Swedish port on the island of Gothland in the Baltic sea. They controlled in the Baltic and North seas in the twelfth and thirteenth centuries, and were the rules of decision in Denmark, Sweden, and among the Baltic powers for years thereafter. They are full of the principles perpetuated by the ancients.

Fourth. The Hanse-Towns laws originated in Bremen in 1164, and

were the maritime authority of the Hanseatic Confederacy until the last century and they are still largely the modern basis of the Prussian and German maritime law.

Fifth. France and England have given us much maritime law. It is impossible to detain you further by treating of them. One of the strangest things, however, about modern maritime jurisprudence is that England, for many years the greatest of all maritime nations, has never clearly systematized nor codified her maritime rules and decisions. Her "Merchant Shipping Act" is the nearest approach thereto. I mention this as it increases the difficulties surrounding the full mastery of maritime law as it comes to us in our present day.

Sixth. Holland follows largely Wisbuy and the Hanse-Towns.

Seventh. Spain still wisely clings for her basic rules to the *Consolato del Mare* as do all the modern Mediterranean countries, states and ports above referred to.

In comparatively modern times there were two great events which entered into the expansion and cause diversity in maritime law. One was the discovery of the mariner's compass. The other, the discovery of America. While the discovery of the compass belongs to France, Prince Henry, son of John I, king of Portugal, was the first to grasp and expand the great advantages to navigation and commerce by the use of the compass. Mariners under him, and other navigators, who in the fourteenth century were rapidly developing astronomy as well as the uses of the compass, became very daring and venturesome. This led to larger and stronger ships and to the construction therein of greater conveniences as to provisions for extended voyages and the like. While the Portuguese armed with the astralabe and the compass were roaming and exploring the coasts of Africa, the Spaniards who had built a powerful marine under Ferdinand and Isabella, struck out for the westward. Genoa, Pisa and Florence have never been accorded their proper quota of glory in the discovery of the New World. They furnished Spain with many of her best sailors and ships. Columbus himself was an intrepid, capable and enterprising sailor from Genoa, and Americus Vespuccius, who in 1497 stamped his Christian name upon this entire Western Hemisphere, was a Florentine. These well known events are merely referred to as investigation will show that they led to the adoption of enlarged rules and principles of marine law by nearly every maritime nation of that age.

It will be perceived from what I have said that throughout all epochs both ancient and modern, the great codes of maritime law have advanced, flourished, then become almost obsolete according to the advancement or decline of the maritime power governed thereby.

In nearly every case this decline has arisen from false pride and avarice asserting and attempting to maintain absolute dominion over the sea. Efforts so fallacious that it is to be wondered how modern nations continued their pursuit. The seas were intended by the Creator to be as free to all mankind as the air. Every nation which has resisted this edict of the Almighty has met with disaster and decay. *Mare Liberum* is the only true and stable doctrine.

The coast line and such inland waters or straits as pertain to the territorial sea of each nation and *Ex Necessitate* require the protective marine power thereof, is, and should be the only exception.

During the last few years and since the world has witnessed a display of our valor upon the sea, we hear expressions of thoughtless and mistaken patriotism to the effect that the Pacific must and should become an American ocean, and the like. We are increasing our navy. The burning need of increasing our merchant marine is under way. Let us have a care that as the days of our greatness increase we do not reach the zenith of our glory by perhaps unconsciously exercising despotism over the seas. If the tremendous power of the American nation is exerted towards equal right upon every ocean, at all times, and for all nations, it will go far to promote our maritime laws and commerce. It will also go far to benefit mankind by perpetuating the basic principles and doctrines of our government.

REPORT ON JUVENILE COURTS AND REFORM LEGISLATION.

By HON. A. W. FRATER, of the Superior Court.

Hon. E. C. Hughes, President Washington State Bar Association:

Sir—Pursuant to a resolution adopted at the last meeting of the State Bar Association, requesting the undersigned to prepare a written report for publication in the annual proceedings upon the subject of "Juvenile Courts and Reform Legislation," I beg to submit the following:

The subject which the writer has heretofore designated "A New Philanthropy" is a culmination of the higher thought which for years has pervaded the minds of those people who have had in view the betterment of society, the impressing correct ideas of morality and right conduct upon youthful offenders, and providing proper care for neglected and dependent children. In this age and land of rapid progress, under the demands of commercialism, society, and other controlling causes, we are prone to overlook the fact that the divorce mills continue to grind, and the dives, dramshops, and dens of infamy continue in violation of law, the practices which debauch and ruin the lives of so many of our boys and girls. Therefore, it would be well for us to carefully consider the operation of the juvenile delinquency law, its defects and needed extensions.

When the existing law went into effect, by judicial selection it fell to our lot to preside over the new department of the superior court in king county, and it was with a feeling somewhat of reluctance, and with more or less misgivings as to its success, that we undertook the work. It is a matter of regret that such of the courts as have taken hold of the subject have done so with apparent lack of interest, and in one of our larger counties we are informed that the judges have refused or neglected to carry out any of the provisions of the act, which, in effect, amounts to a nullification of the law. We have observed that the principal and favorite objection of those opposed to the law is that it partakes too much of paternalism and that the state is trenching upon the rights and duties of parents. This objection is a mere subterfuge behind which to shirk a plain duty imposed by law; and while having no desire to usurp the function of the parent, we believe in the

enforcement of those laws that will keep the children in school; that will prevent them from entering dramshops, bawdy houses, and other infamous dens of vice, whether working as messenger boys or for any other purpose whatsoever; that will keep them off the streets in the nighttime, and from obtaining tobacco and cigarettes, the use of which is destructive of their mental and physical being. In other words, we believe in saving misguided boys and girls; and that the turning of a boy from a criminal career, or a girl from a course that would lead to a life of shame, is an accomplishment of which any public official might well take great pride.

The state recognizes the father and mother as the natural guardians and instructors of their children; such they are, and they not only owe this duty to the child itself, but they owe it as well to the state. Many parents utterly disregard these obligations, which are both moral and legal—some, through ignorance; others are simply careless, failing to appreciate its importance, and still others seek to shirk responsibility and deliberately neglect their children.

During the early operation of the law, the impression seemed to prevail that the statute was criminal or quasi-criminal in character, and that a child could, through its parent or guardian, when charged with delinquency, demand a jury trial. This view of the law we held to be erroneous, which position is correct and has been sustained by an opinion of the supreme court of Illinois under a similar statute, in which that court holds in substance as follows:

"The proceeding is statutory and the object is not the enforcement of the criminal law, but the protection of children; that infants are in general, in a sense, wards of courts of chancery, and the protection and procedure should be that of courts of equity so far as consistent with the provisions of the statute."

The court further holds:

"That the procedure under the statute is constitutional and valid; that the commitment by the court to institutions is not imprisonment as punishment for a violation of the criminal law, but is merely the assumption by the state in its capacity of *parens patriæ* of parental authority for education and reform, and that the institution is not to be regarded as a prison, but, in fact, a home and school established by law for the benefit and good of those who are found to stand in need of parental care."

Juvenile courts in England are styled "Courts of Gentle Correction," and the name is, in our opinion, both euphonious and applicable; as, in fact, they are courts of correction. The status of the court being thus established, it may be interesting to know that, in its conduct, the business is transacted with a great deal of informality. The technical rules

of evidence are brushed aside and everything touching upon the charge direct and hearsay, is admitted and usually the youthful culprit is given an opportunity to tell his story to the judge in private, and we can safely say, under proper questioning and assurances, the truth is invariably told. After getting at all the facts, the case is disposed of on its merits, always keeping in mind the welfare and reformation of the child.

Under the law, as the same has been construed, there is a wide discretion vested in the court in dealing with the youthful offenders. We do not appoint attorneys to defend, and, in fact, do not encourage their employment. In the language of Judge Lindsey, "the court is their defender, and protector as well as their corrector." As a protection to the youthful offender, that there may be no serious record standing against him, no matter how grave the actual offense may be, he is simply charged with being a delinquent child, and he is always a delinquent, *never a criminal*, being regarded as one more sinned against than sinning, whose unfortunate plight is the product of immaturity, inexperience, and parental neglect, rather than conscious criminality, and whose punishment as a criminal is vicarious and unjust.

There is no fixed rule for the disposition of cases, nor can there be any. Each case is a psychological study and must be dealt with by itself. In order to do this we must ascertain and determine the contributing causes, environment, associates, home surroundings; and in a large majority of the cases we find the delinquency is due to parental neglect. There are two classes of parents, which we shall designate as excusable and inexcusable, viz., widows and abandoned mothers, who have to labor for the support of themselves and their families, and who, on account thereof, are unable to properly look after and care for their children. The same reasons apply to men who have lost their wives by death. Those belong to the excusable classes, and are the proper subjects upon whom the state should confer its aid.

On the other hand, there are those people in affluent circumstances who have the means to give their children every consideration and modern advantage, but by reason of social demands or commercial pursuits, their time is so occupied that the boys and girls are permitted to go whither they will; and under those circumstances the children of such parents are frequently found in the juvenile courts. There are also the over-indulgent, shiftless, careless, drunken and criminal elements. Those are the inexcusable classes.

What is needed is a law authorizing the court to place the responsibility where it belongs, and, if necessary, to punish the real delinquent, the parent; a law whereby the court may say you cannot permit your

child to play around railroad yards; you shall not send him into saloons for beer; you must not permit him to be out late at night, or to use profane and obscene language, steal, and, in fact, run wild without any attempt at proper restraint.

If such were the law, most parents, through shame of the charge of neglecting their children, would be particular in keeping them under proper control. Self preservation would be a strong incentive to others, for when it was once understood that a parent might be fined or sent to jail for permitting his boy to enter a saloon, dime show, or dive of worse character, he would very promptly get busy and attend to some of his God-given, but neglected, duties. Space would not permit of the treatment of concrete cases, but under the operation of the law, inadequate as it is, the results are satisfactory, notwithstanding the fact that we have only given this court the minimum of time, as well as of consideration, owing to the stress of business in other departments.

By way of results, we have seen boys, well started on lives of crime, turned; and under our probation system they promise well to become useful and honest citizens. We have had the satisfaction of breaking up numerous hoodlum gangs in various parts of the city. We have dealt with forms of vice unknown to the general public, and with beneficial results.

It is a well known fact that the criminals of all classes are recruited from the young and impressionable; and when we throw the protecting arm of the law around them, and see to the intelligent enforcement of the statutes enacted for their protection by conscientious officials, we are striking at the root of the evil with a power not to be resisted. It will have a further beneficial effect when the power is conferred upon the court to deal with the parent for the delinquency of the child, for it will certainly awaken parents generally to a proper sense of their responsibilities with regard to the children they bring into the world.

The adult delinquency law should be made broad enough to reach the able-bodied man who spends his time loafing on the street corners or in the saloons, while his wife makes a living by scrubbing offices or taking in washing. Any such individual who will not work, or one who works and will not support his family, should, if necessary, in order to bring him to a proper realization of his duty, be sent to the chain gang, or, in aggravated cases, to the penitentiary.

The delinquency act should be amended so that in counties of the first class the court, in its discretion, might have two paid officers, who would be in attendance upon the court at all times. So that each case submitted with or without written complaint might be promptly investigated. Under the existing law, voluntary officers cannot always

be relied upon, as they have other duties to perform which require much of their time. The judge should be authorized to appoint a court physician to examine and, if necessary, treat all children when disease or illness is given as a cause for delinquency, and that parents might be required to pay for such treatment when the court finds that they have been neglected. The act should be further amended granting the court power, by judgment, order, or decree, to coerce parents, who wilfully neglect their children, and we would suggest the following from the Illinois law.

"In any case in which the court shall find a child neglected, dependent or delinquent, it may in the same or a subsequent proceeding, upon the parents of said child, or either of them, being duly summoned or voluntarily appearing, proceed to enquire into the ability of such parent or parents to support the child or contribute to its support, and if the court shall find such parent or parents able to support the child or contribute thereto, the court may enter such order or decree as shall be according to equity in the premises, and may enforce the same by execution, or in any way in which a court of equity may enforce its decree."

A law should be enacted making it a penal offense for any person or the officers of any company or corporation to employ in the messenger service any person under 19 years of age.

A law should be enacted making it a penal offense for any person to entice any girl, under 18 years of age, from her home for any purpose whatsoever without the consent of her parents, guardian or persons having her in charge.

A law should be enacted making family desertion without proper cause a felony and providing for adequate penalties. This act should include the father in all cases, and the mother when charged by law with maintenance of children.

The divorce laws should be amended in the following particulars:

(a) Only citizens of the United States and actual *bona fide* residents (inhabitants) of the state for two years, should be permitted to bring an action for divorce.

(b) The last clause of subdivision 7, section 4630, Pierce's Code, should be repealed.

(c) Publicity, viz., after service has been made, summons and complaint shall be filed, six months before the cause can be noted for trial or be heard by the court.

(d) Both parties shall be prohibited from contracting the marriage relation with any third party for a period of six months after filing decree, and either one or both parties may be prohibited from contracting such relations for any longer period or at all, to be fixed in the discretion of the court.

(c) Every cause shall be regularly docketed and tried in open court.

The foregoing recommendations are prompted from the fact that a large percentage of the cases coming before the juvenile court are from the homes of divorcees.

The law of contempts should be amended; increasing the penalties for violation of the court's orders and decrees, particularly in matters of divorce, and as affecting the welfare of delinquent and neglected children.

Provision should be made for a separate institution for the girls now and hereafter to be committed to the Reform School, and I would suggest as a name, "State Industrial Home for Girls."

A law should also be enacted making the abandonment of destitute, infirm and aged parents, by their children, who are possessed of the means to provide for such parents, a misdemeanor with adequate penalties, and when such aged people are committed to the insane asylum those responsible for their commitments should be charged by the state for their maintenance.

A law should be enacted authorizing the courts to commit inebriates, habitual drunkards, and dope fiends, under proper procedure, to the insane asylums or the state penitentiary for compulsory treatment, in the absence of any other better place of confinement.

A law should be enacted to the effect that any person accused of homicide who shall set up insanity as a defense, and is acquitted by the jury, may be committed to the hospital for the insane or the penitentiary for life, or any term of years to be fixed in the discretion of the trial court.

The observations, together with the recommendations herein contained, are the result of actual experience in dealing with cases touching upon the various subjects discussed. We regret that time and space forbid further elaboration, but trust the bar of the state may interest itself and bring to the attention of the members of the legislature to be elected this year from the several counties, the imperative demands for reform legislation along the lines herein suggested.

Respectfully submitted,

A. W. FRATER.

RECOMMENDATIONS OF THE ASSOCIATION OF PROSECUTING ATTORNEYS.

To the President and Members of the State Bar Association of the State of Washington:

We, the Association of Prosecuting Attorneys of the State of Washington, beg leave to submit to the State Bar Association of the State of Washington, that we have perfected a permanent organization, which will hereafter meet annually at the time and place of the meeting of the State Bar Association of the State of Washington.

Our Association will hereafter be known as the "Association of Prosecuting Attorneys of the State of Washington."

We submit to the consideration of your honorable Association the following resolutions, which were unanimously adopted by our Association at our meeting in the city of Everett, on this 12th day of July, A. D. 1906:

1st. We recommend that the laws relative to foreclosure of delinquent tax certificates be so amended as to relieve the prosecuting attorneys of the state of the burden of foreclosing tax certificates which are held by private individuals.

2nd. We recommend that a law be enacted which will authorize and empower the prosecuting attorneys to subpoena and compel the attendance of witnesses before him of such persons as he shall suspect of having knowledge touching criminal cases which he may have before him for consideration, and providing penalties for the violation thereof.

3rd. We recommend that an act be passed that the judge of the superior court before ordering the issuance of a subpoena for witnesses to the defendant in criminal cases, may require the defendant or his counsel to satisfy the court upon ex parte application that the testimony which such witnesses shall give will be material.

4th. We recommend that a statute be enacted which shall define and provide a punishment for criminal slander.

5th. We recommend that legislation be enacted which shall provide a penalty for the crime of adultery.

6th. We recommend that the law relative to bribery be so amended as to include city councilmen.

7th. We recommend that an act with reference to bastardy be enacted.

8th. We recommend that appropriate legislation be had defining and fixing punishment for disorderly conduct.

9th. We recommend that the act of the legislature of 1903 relative to cumulative punishment of persons convicted of a felony or misdemeanor be so re-enacted as to include within the title of the act all matters included within the body of the act. (Laws 1903, page 125, chapter 86.)

10th. We recommend that the act of the legislature of March 16th, 1903, relative to the punishment of persons living with or off of the earnings of fallen women, be so re-enacted as to include within the title of the act all matters included within the body of the act.

11th. We recommend that the third section of the act of the legislature found on page 163 of Laws of 1899, be amended by inserting after the word "act" of the third line of said section, the following:

"Or who shall cause, suffer or permit any person in his employ or under his direction or supervision, to violate any of the provisions of this act."

12th. Whereas, there seems to be an uncertainty as to whether section 3, to be found at page 316, Laws of 1905, provides a penalty for the violation of sections 1 and 2 of said act severally, we therefore recommend that legislation be enacted which will provide with certainty, a penalty for the violation of these sections severally.

13th. We recommend that section 7264 of the second volume of Ballinger's Code be so re-enacted as to refer to chapter 51, page 63, Session Laws of 1903.

14th. We recommend that legislation be enacted which shall provide for certainty in giving notice of withdrawal by sureties from official bonds, and providing for a return of service thereof and for filing the same.

15th. We recommend that appropriate legislation be had which will provide a penalty for failure on the part of corporations to file with the county auditors of the respective counties of this state in which the principal place of business of such corporation shall be located, annually, a list of all the officers of such corporation.

16th. We recommend that legislation be enacted which shall provide that service of process upon the officers of corporations whose names shall appear upon the last list of its officers filed in the office of the county auditor shall be deemed a sufficient service upon such corporation.

17th. We recommend that such law be enacted as may be necessary and proper to delegate to juries the power of imposing either the death penalty or imprisonment in the penitentiary for the term of the natural life of the defendant, all persons who are found guilty of murder in the first degree.

18th. We recommend that in all cases where the defendant is charged with murder in the first degree to which the defense of insanity is interposed, the jury shall have the right to return a verdict of not guilty by reason of insanity, and upon such verdict being returned it shall be the duty of the court to cause the defendant to be confined in some place of detention to be provided by law.

Respectfully submitted,

J. W. HARTNETT,
President.
GEO. H. RUMMENS'
Secretary.

IN MEMORIAM



EBEN SMITH.

Remarks by HON. C. H. HANFORD.

Mr. President: Since the last annual meeting of this Association several members of the bar of this state have been transferred to another world. The thoughts which have found expression in reviewing the lives of persons who have stamped the impress of their individuality upon the pages of history, embracing the localities and the times in which they were actors, have added much to the store of knowledge. The philosophy of human life and the study of human character are the most interesting and the most important fields of inquiry. The motives which actuate conduct, the deeds which develop character and make history, when studied reveal to us the secret paths to success and the dangers and pitfalls which environ us, and often our own capacities and weaknesses. Therefore it is true that the good and the evil which men do live after them in the effect upon others to stimulate them to strive to do their best or to warn against evil.

It is well for us, amid the activities in which we are engaged, to give time and thought to those whose life records have been finished and that kind words should be spoken commemorative of the virtues of our brothers whom we can no longer greet in our fraternal meetings.

I feel called upon to speak a few words with reference especially to the life of Eben Smith, a lawyer who lived and practiced in this state for about twenty-five years, and who was known, I believe, to most of the members of the bar of the entire state. Eben Smith was my friend. I was very fond of him, and what is true of me personally I believe will find response in the hearts of all others who knew him. Everybody who knew Eben Smith liked the man, and why? He was not greatly distinguished from other men by any one particular characteristic, but it was in the perfection of a good character. In all the different attributes that make a lovable character and good man, Mr. Eben Smith seemed to approach to perfection. He was a genial friend. His friendship was always cordial, though not offensive, never pretentious, and there was a warmth in his hand when he greeted you and a cordiality in his smile that endeared him to all who knew him. He was a good citizen, always willing to do his part with others in what was best for the community in which he lived. He was a good man in his own family. In every way in which a man is true and faithful to his

own home, Eben Smith was an ideal character. He was a good lawyer. He was well-grounded in all the principles of law and especially well informed in regard to the details of equity practice. The principles of equity were not only ground into his mind but his character seemed to partake of the doctrines of equity jurisprudence. He was faithful to his clients and towards the court he was not only respectful but he always showed that disposition which a lawyer should have to aid the court in rendering justice. I believe that, in the lives of such men, the wealth of the commonwealth has received a valuable addition. It is the lives and conduct of its men and women which make a community great and, while he is gone, his life and his conduct should be to us an incentive to do the best we can in building a worthy state, in developing moral character and virtues, and the intellectual progress of the times in which we live. I will not consume more of your time. In the few words which I have spoken I am only echoing what has been said before in commemoration of the life and character of Eben Smith.

GEORGE. W. FOGG.

Remarks by JAMES M. ASHTON.

Mr. President: During the past year there has passed from this sphere of life a member of the bar of Tacoma who was highly respected and whose association and friendship was sought for and highly prized by every member of the bar in Pierce county, with whom he was constantly brought in contact. That was Major George W. Fogg, of Tacoma. Major Fogg came to this state when well along in life and took up the practice of his profession in Tacoma. It was not long before we found in Major Fogg one whose influence was that of loftiness and elevation to his brethren at the bar, particularly in connection with the practice. He belonged to the old school of practitioners. The dignity of the law, and precision and accuracy with its practice, were held in high esteem by Major Fogg, and I believe I am voicing the sentiments of other brethren in Pierce county when I say that it inspired us all with a desire to adhere to the high standard of ethics with which Judge Fogg was at all times animated. As a man, his character was pure. His devotion in the way of domestic life and social life was earnest, sincere and beyond any question.

I feel, in closing these remarks about Major Fogg, that during the

years when he was known to us in Tacoma, and from all I have been able to learn as to his last days, that, while they were afflicted with considerable suffering, he nevertheless passed into the Court beyond with that degree of mental composure and purity of conscience which must be a great comfort to all men when giving up the toils and troubles of life in this world.

GEORGE MEADE EMORY.

Remarks by HON. MILO A. ROOT.

Mr. President and Gentlemen: Unexpectedly, I have been requested to say a few words relative to the life and character of our departed friend and brother, Judge G. Meade Emory. It is certainly interesting to us all to hear such observations as we have just listened to from Judge Hanford and General Ashton relative to the two distinguished members of whom they spoke. It was my pleasure to know each of them. Judge Smith I knew for a great many years quite intimately and I think he was one of the most lovable men I ever knew, possessed of so many of those virtues that mankind universally esteem as most commendable; and, while my acquaintance with Major Fogg was not so intimate, yet it had extended over many years and I can highly appreciate the tribute General Ashton has paid to his character as a man and a lawyer. These two men, if I might be allowed to divide the members of the bar into two classes, the older and the younger, would fall in the older class, and probably the man of whom I am to speak would fall among the younger, and yet he had been in the practice for quite a number of years, some twelve or fifteen, I think, and had built up a reputation of which anyone might be proud. Judge Emory, to my mind, was a typical lawyer, representing the best spirit of this age. He was aggressive, he was active, he was energetic, he was vigorous. He was upright, he was honorable. He belonged to that type of men who are building up this commonwealth in the rapid and substantial manner in which we see it being developed. He was a man whom you could not know without being favorably impressed. In his profession he was thorough, courteous and gentlemanly. He was a good lawyer, and in the preparation of his cases he showed a great degree of skill and was a hard worker. When he went into the court room he

understood his case thoroughly, and he presented it well, either to court or jury. He was skillful in the matter of eliciting evidence from witnesses and in cross-examination and in presenting what he believed to be the facts or law in the case; and, while he was vigorous, while he was a hard worker, while he was skillful in the practice of his profession, he never at any time forgot those underlying principles of honesty, of honorable conduct, of courtesy, which characterize, and always have characterized, great lawyers. When we think of the terrible tragedy which marked his taking off, the old adage comes to us with great force, "Death loves a shining mark." He was a good man to know. He was a man whose friendship it was well worth while to have, and he was a man with whom you could not associate without inhaling, to a certain extent, the spirit that pervaded his whole being. He was a man who could not carry on the ordinary performance of the duties of his profession without making his impress upon those with whom he associated; and, while it was a delight to associate with him as a member of the bar, it was also a great pleasure to know him personally as a man. His ideals were high, his principles were sound, and he was conservative, notwithstanding his aggressive and vigorous conduct, to the extent of doing his duty with reference to the rights of all men and matters that might be involved. In his personal friendships, he was a warm-hearted, and generous friend, and, in his family relations, he was a delightful and devoted father and husband. I am told that, during the last hours, when he knew that death was approaching, when he was suffering great agony, he put in much of his time consoling his wife, oblivious of his own pain and suffering, his heart going out to the dear ones he was soon to leave.

As was said by Judge Hanford, the lives of these great men teach us lessons. In fact, all history is made up, largely, of the lives of a comparatively few great men; and in any given place, in any association or profession, the lives of a comparatively few give character to the whole. Certainly Judge Emory's impress has been made upon the bar of the county in which he lived, and upon the bar of this state. As we stop, at a time like this, to dwell upon his life, to meditate upon the principles which he exemplified, I do not think that any lawyer can turn from that contemplation without being a better member of his profession and a better man. I only wish that I might have had with me data to give you, more in detail, some account of Judge Emory's life; but, being called upon unexpectedly, I am unable to do so; but it is a pleasure to testify to his standing and character while among us, and I feel that, in thinking over the lives of these men who have been mentioned here today, we all feel that our profession is richer by reason

of their lives and that we will be better prepared to carry on the duties that fall upon each one of us by contemplating the good and beautiful elements of character which these distinguished men so well and so fully represented.

The following memorandum was handed the Secretary by Judge Root, subsequent to his remarks above set forth:

George Meade Emory was born at Atlanta, Georgia, February 19, 1869. In 1887 he was granted permission to enter the sophomore class of Harvard college but did not enter that institution. In 1890 he was admitted to the bar at Syracuse, New York, where he had studied in a law office. He also attended the law department of Cornell University from which he graduated in June, 1890. The next month he came to Seattle. From 1891 to 1901 he was a member of the well known law firm of Bausman, Kelleher & Emory. In 1901 he was by the Governor appointed as a judge of the superior court for King county, and held that position until November, 1903, since which time he was engaged in a large general practice up to the time of his tragic death. He was married and had a family of six children.

CLARENCE E. GRIFFIN.

Remarks by T. L. STILES.

Mr. President: There is another name which I wish to bring to the attention of the Association, the name of a member of the Association who died during the past year at Tacoma—Clarence E. Griffin—Judge Griffin, we lawyers called him. Judge Griffin never practiced law among us. He came to us when he was considerably advanced in life; not an old man at all, but a man who was prematurely aged by disease. He came to Tacoma in ill health and was really unable to resume the practice of law, which he had followed in Massachusetts, I think it was, for a number of years, but those who became acquainted with him very soon became impressed with his qualities and characteristics and it was fortunately deemed advisable to elect him as one of the justices of the peace and he was so elected and acted as municipal judge, police judge, and certainly no more fortunate appointment could have been made in any community. He brought to that humble office qualifications which are not usually found in that office. He was a man

of education, of scientific attainment in his profession, of the kindest nature and of eminent good sense. Those qualities we all know are pre-eminently useful in that kind of a place and we, in Tacoma, feel that the absence of crime from that community is largely due to his administration of that office. But there is one thing for which Judge Griffin will be remembered by people outside of Tacoma: He had an enthusiastic love of children and was a student of records which go to show what should be the treatment of the juvenile offender. He became convinced that the treatment of them, as they have ordinarily been treated heretofore, was wrong; that the tendency was to make criminals out of them instead of making them good citizens. He adopted theories of his own, pushed them, as he did everything, vigorously, and astonishingly so considering the condition of his health, and to him I think more than any other person in the state, is due the fact that we have now on the statute books of this state a juvenile offenders' act and provisions for a juvenile court. He was called abroad, in many localities, to express his views upon that subject and was always found interesting. When he left an audience which he had addressed on that subject, there were no doubters. His decease lost to us his further influence upon that subject, but the seed had been sown here and I believe that the effort which he made will grow into fruition and, as time goes on, when this difficult problem of how to treat the children who are inclined to be wayward and who, if they are allowed to go unchecked and if their treatment is wrong, might become a menace to the state rather than a support, I believe it will be found that, largely through his efforts, a reformation has been inaugurated for which people generally in this state will rise up and call him blessed.

Remarks by R. S. HOLT.

Mr. President: I had the pleasure of knowing Judge Griffin very well indeed during the time he was in Tacoma and, knowing his history, his life, his ambitions, I was always impressed with the fact that there was something peculiarly pathetic in the turn of his life and in the fact that, after having struggled so hard, so long and so laboriously as he did to establish himself as a lawyer in his profession, he was finally compelled to lay it aside and embark in something in the nature of a collateral career, but when we consider the facts stated by Judge Stiles, the opportunity that it afforded him to accomplish something for the good of his race, we realize perhaps, as he doubtless realized, that his inability to follow a career that he marked out for himself during the early struggles of his life, perhaps resulted in en-

abling him to accomplish that which he might not have been able to accomplish had he remained in the ranks of the profession. Judge Griffin was born in either Nova Scotia or Newfoundland and he was a country boy with few opportunities. He had the same early history that so many of our great men and great lawyers have had. He fought and he struggled against odds to acquire his education and, having acquired that, he took the next step that so many able lawyers have taken—he commenced to teach school in order to obtain a living. He drifted into the state of Massachusetts and there he continued to teach school until finally, having employed his leisure hours in the study of his profession, he commenced the practice of law and then, attracted by the west, he came to Tacoma. It may be his studious life, his occupation, perhaps his temperament, or all things combined, prevented him from developing those qualities and characteristics that would have given him an opportunity to make a success in the field which he selected, but he soon found, with his limited means and his retiring, modest disposition, that he could not secure a foothold as a practicing lawyer, and it finally resulted in his taking the position, which he filled with great honor, of police judge, and I have sometimes thought, when I contemplate the life of the average lawyer, that it was a little sad, because when we consider the important part we play in life and the labor than we devote in building up our legal attainments and acquirements, we leave extremely insignificant evidences of our work behind us when we go, and if a lawyer could leave behind him some monument such as Judge Griffin, in his humble way, has left it would be perhaps a more enduring monument than the ablest and most distinguished among us has the power and opportunity to leave. A lawyer's life, to the casual observer, would seem to be singularly devoid of those rewards which come to most men, and I have sometimes felt that way about it myself, but when we realize the truth of what Macaulay said, "Surely no external advantage is to be compared," he said, "to that purification of the intellectual eye that enables us to behold at a glance the hidden riches of the mental world;" when we realize that perhaps of all classes of people in the world, except the professors in colleges, the lawyers have the highest trained minds and greatest acquirements of knowledge collateral to their professions; when we realize to what a high degree of perfection their intellects are trained, and when we realize that, more than all other classes of people in the world, we can meet together in the highest form of intellectual and social pleasures, then perhaps we will conclude, if we think about it, that our rewards are not only in accomplishing good for our clients but in refining associations with one another and in the cultivation of the higher qualities of the intellect.

CHARLES A. MANTZ.

Obituary by WILLIAM E. RICHARDSON.

Charles A. Mantz was born in Medina county, Ohio, in the month of April, 1867. He was the son of Franklin R. and Phoebe Mantz, was a graduate of Cornell University, and was admitted to the bar in the state of Kentucky in 1890. In the following year he came to Washington, and began the practice of law at Everett. Shortly thereafter he removed to Colville, Stevens county, Washington, and in 1894 was elected prosecuting attorney of that county. Although he was remarkably successful in the discharge of the duties of that office, he refused a renomination, desiring to devote more time to his private practice.

In 1898, he was elected to the state senate, and served the full term of four years in that office. As a senator he soon made his influence felt, and was regarded as one of the foremost men in his party. He was an ardent advocate and tireless worker for what he conceived to be the best interests of the common people. He was one of the most conspicuous advocates of the railroad commission bill, and while he was engaged in many a hotly contested political battle, his sterling honesty, and high character as a man challenged the respect even of his enemies.

Personally, Mr. Mantz was genial and companionable, and while he had the respect of all men, he was sincerely loved by his intimate friends. His death was the result of a brief illness, and caused a profound shock, not only in the immediate community in which he lived, but throughout the county in which he had made his home for fifteen years, and where he numbered many devoted friends.

Mr. Mantz was married to Miss May Stringham, and had five children, Lee A., Charles C., Helen E., Mary K., and Phoebe R. His home life was singularly happy, and he was idolized by his wife and children.

I knew him as a lawyer, and was proud to claim him as a friend. His professional career was without a blemish, and to it he gave most of his time and energy. He was a good lawyer, an honest man, a true friend, and a loving husband and father. More than this can scarcely be said of any man. I knew Charley Mantz well, and loved him as a brother. Our professional and personal association will always be one of the dearest treasures of my memory.

PAPERS READ.

Year.	Writer.	Subject.
1894...	John Arthur.....	President's Address—"Lawyers in Their Relations With the State."
"	...R. A. Ballinger.....	"Our Community Property Laws."
"	...Frank H. Graves.....	"Non-Partisan Selection of the Judiciary."
"	...Thomas Carroll.....	"Policy of Redemption Laws."
"	...John W. Pratt.....	"Government of Cities."
"	...Charles S. Fogg.....	"Evils of the Promiscuous Appointment of Receivers."
"	...James B. Reavis.....	"Our Exemption Laws."
"	...Frank T. Post.....	"The Material Man's Lien."
"	...Orange Jacobs.....	"Reminiscences of the Bench and Bar of Washington."
1895...	George M. Forster....	President's Address.
"	...George Turner.....	"Practice and Procedure in the State of Washington."
"	...Charles O. Bates.....	"Juries and Jury Trials."
"	...David E. Baily.....	"Stare Decisis."
"	...C. H. Hanford.....	"Jurisdiction of American Courts, State and Federal."
"	...John J. McGilvra....	"The Pioneer Judges and Lawyers of Washington."
1896...	Charles S. Fogg.....	President's Address—"The Law and Lawyer in History."
"	...T. N. Allen.....	"Judicial Legislation."
"	...N. T. Caton.....	"Pioneer Judges and Lawyers."
"	...Emmett N. Parker....	"Probate Law and Practice in Washington."
"	...George Donworth....	"Corporations."
"	...R. S. Holt.....	"Contributory Negligence."
"	...James Z. Moore.....	"Landlord and Tenant."
"	...Alfred Battle.....	"Record Notice and Curative Acts."
"	...W. T. Dovell.....	"Bench and Bar."
1897...	Harold Preston.....	President's Address.
"	...E. B. Leaming.....	"Philosophy of the Law."
"	...W. H. Pritchard.....	"The Policy and Practical Effect of Usury Laws."

Year.	Writer.	Subject.
1897...	Ben Sheeks.....	"Some Judicial Opinions—A Study."
"	...Austin Mires.....	"Irrigation and Water Rights in the State of Washington."
"	...John P. Hoyt.....	"Reminiscences of the Bench and Bar of Washington."
1898...	George Turner.....	President's Address.
"	...W. C. Sharpstein.....	"Annexation of Foreign Territory; Its Constitutionality and Expediency."
"	...F. H. Brownell.....	"Mining Laws in Washington."
"	...James Wickersham...	"The Constitution of China—A Study in Primitive Law."
"	...Henry M. Hoyt.....	"The Legal Effects of Mortgages and Pledges of Rents and Profits of Real Estate."
"	...Frederick Bausman...	"Public Policy as an Element of Judicial Construction."
1899...	Theodore L. Stiles....	President's Address—"Legislative Encroachments Upon Private Rights."
"	...James G. McClinton..	"Reform in Criminal Procedure."
"	...Byron Millett.....	"Fourteenth Amendment to the United States Constitution."
"	George H. Walker.....	"What Shall Be Done About the Trusts?"
"	...E. F. Blaine.....	"Decennial of Our State Constitution."
"	...Samuel R. Stern.....	"The Law and the Laborer."
1900...	George Donworth.....	President's Address—"The Passing of Precedent."
"	...Will H. Thompson....	"The Status of Our Newly-Acquired Territory."
"	...Herbert S. Griggs....	"Admiralty Practice."
"	...Charles E. Shepard...	"Limitations on Municipal Indebtedness."
1900...	C. W. Hodgdon.....	"Government Ownership of Railroads."
"	...J. B. Davidson.....	"Needed Reforms in the Laws of Marriage and Divorce."
"	...Thomas B. Hardin....	"How Should United States Senators Be Elected?"
1901...	Samuel R. Stern.....	President's Address.
"	...A. G. Kellam.....	"The Trust Fund Theory of Corporation Assets."
"	...T. O. Abbott.....	"Advantages of the Torrens System of Conveyancing."
"	...E. G. Kreider.....	"Law Reporting."
"	...Joseph Shippen.....	"The Insular Questions and Their Solution by the Supreme Court of the United States."

Year.	Writer.	Subject.
1902...	Austin Mires.....	President's Address.
"	...Edward Whitson.....	"The Course of Legislation in Washington."
"	...Will C. Graves.....	"Stability of Legal Principles—A Thing of the Past."
"	...Arthur Remington....	"Railway and Transportation Commissions."
"	...C. H. Hanford.....	"Conflicting Decisions of Federal and State Courts."
"	...Orange Jacobs.....	"Reminiscences of Bench and Bar."
"	...Edward Pruyn.....	Poem—"A Day in Court."
1903...	R. G. Hudson.....	President's Address—"Trusts."
"	...F. D. Nash.....	"Street Assessments."
"	...N. T. Caton.....	"Some Pioneer Judges and Lawyers I Have Known."
"	...L. Frank Brown.....	"The Use and Abuse of the Labor Union."
"	...Thomas Burke.....	"The Life and Character of John B. Allen."
"	...John T. Condon.....	"A Theory of Legal Obligation."
"	...James B. Reavis.....	"Taxation of Franchises."
1904...	W. A. Peters.....	President's Address.
"	...Carrol B. Graves.....	"The Desirability of Harmonizing State and Federal Statutes on Irrigation."
1904...	E. C. Macdonald.....	"Relief of Our State and Federal Courts."
"	...Alfred Battle.....	For Affirmative of, "Should the State Permit Corporations to Own and Vote Stock in Other Corporations?"
"	...Theo. L. Stiles.....	For Negative of, "Should the State Permit Corporations to Own and Vote Stock in Other Corporations?"
1905...	Edward Whitson....	President's Address.
"	...S. M. Bruce.....	"The Jury System."
"	...Harvey L. Johnson...	"The Development of the Law of Labor and Labor Organizations."
"	...Geo. Ladd Mann....	"The Community Property Law and Non-Residents."
"	...C. C. Gose.....	"Is the Provision of Our State Constitution in Conflict with the Fourteenth Amendment."
1906...	Francis H. Brownell..	President's Address.
"	...Frank H. Rudkin....	"The Court's Work."
"	...Geo. E. Wright.....	"Some Questions of Real Estate Law."
"	...Henry McLean.....	"The Evolution of State Legislative Methods."
"	...James M. Ashton....	"Maritime Law."
"	...J. B. Bridges.....	"Log Booms on Navigable Rivers."

ERRATA.

Page 196, 13th line from bottom: for his read this.

Page 204, 17th line from top: for expension read expansion of.

Page 204, 2d line from bottom: for become read became.

Page 205, 4th line from bottom: for right read rights.

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Bar Association*

PROCEEDINGS

OF THE

Washington State Bar Association

NINETEENTH ANNUAL SESSION

Held in the City of Seattle, July 11, 12 and 13, 1907

PROCEEDINGS REPORTED BY

H. H. HUMPHREY

OF THE SPOKANE BAR

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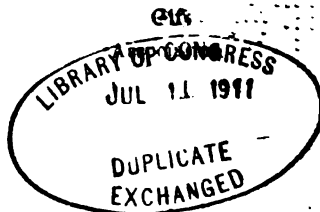
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The Twentieth Annual Session
of the
Washington State Bar Association
will be held in the
City of Spokane, July 10, 11 and 12, 1908

The Thirty-second Annual Meeting
of the
American Bar Association
will be held in
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5

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Ballinger, R. A.....	Seattle
Bard, W. H.....	Seattle
Barney, C. R.....	Seattle
Barnhardt, R. M.....	Spokane
Barry, A. W.....	Conconully
Bates, C. O.	Tacoma
Battle, Alfred	Seattle
Bausman, Frederick	Seattle
Baxter, Chauncey L.....	Seattle
Beals, Walter B.....	Seattle
Beatty, W. H.....	Seattle
Bedford, Charles	Tacoma
Beebe, A. H.....	Seattle

Bell, Ralph C.	Everett
Bell, W. P.	Everett
Belt, Geo. W.	Spokane
Bennett, Burton E.	Seattle
Birdsall, Wm. T.	Spokane
Black, A. L.	Bellingham
Black, W. W.	Everett
Blackburn, H. H.	Tacoma
Blaine, E. F.	Seattle
Blake, Henry F.	Seattle
Blattnor, F. S.	Tacoma
Booth, Robt. F.	Seattle
Bradford, James E.	Seattle
Brady, Edward	Seattle
Brandt, Emil J.	Seattle
Brents, Thos. H.	Walla Walla
Bridges, J. B.	Aberdeen
Brinker, W. H.	Seattle
Bronson, Ira	Seattle
Brown, Ed. J.	Seattle
Brown, L. Frank	Seattle
Brown, J. W.	Seattle
Brown, O. P.	Bellingham
Brownell, F. H.	Everett
Bruce, S. M.	Bellingham
Bryan, Fenley	Seattle
Bryan, James W.	Bremerton
Bundy, E. W.	Seattle
Burke, Thomas	Seattle
Burkheimer, John E.	Seattle
Byers, Ovid A.	Seattle
Campbell, F.	Tacoma
Campbell, John A.	Seattle

Campbell, J. D.....	Spokane
Canfield, H. W.....	Colfax
Cannon, E. J.....	Spokane
Card, E. N.....	Tacoma
Carkeek, Vivian M.....	Seattle
Carlisle, Sam'l S.....	Seattle
Carroll, P. P.....	Seattle
Carroll, Thos.	Tacoma
Casey, J. F.	Seattle
Cass, J. P.....	Tacoma
Caton, N. T.....	Davenport
Chadwick, S. J.....	Colfax
Chester, L. F.....	Tacoma
Christian, Walter.....	Tacoma
Claypool, C. E.....	Circle City, Alaska
Clementson, Geo. H.....	Seattle
Clifford, M. L.....	Tacoma
Clise, H. R.....	Seattle
Cole, Geo. B.....	Seattle
Cole, Irving T.....	Seattle
Coleman, A. R.....	Port Townsend
Coleman, Wilbra.....	Sedro-Woolley
Condon, John T.....	Seattle
Congdon, Geo. G.....	Seattle
Connor, E. O.....	Seattle
Conover, D. C.....	Seattle
Cooley, H. D.....	Everett
Corbin, E. N.....	Wenatchee
Corliss, C. W.....	Seattle
Corrigan, John L.....	Seattle
Cosgrove, Howard G.....	Pomeroy
Cosgrove, S. G.....	Pomeroy
Crawford, B. B.....	Seattle

Cross, J. C.	Aberdeen
Crow, Denton M.	Spokane
Crow, Herman D.	Olympia
Cushman, E. E.	Tacoma
Daly, W. J.	Seattle
Darch, Wm. F.	Goldendale
Davidson, J. B.	Ellensburg
Davis, Peter V.	Seattle
Dawson, James	Spokane
Dawson, W. S.	Spokane
Delle, Lee C.	North Yakima
Deming, A. W.	Spokane
Denning, J. Henry	Seattle
De Steiguer, Geo. E.	Seattle
Dewart, F. M.	Spokane
Dille, W. A.	Seattle
Dobbs, Chas. J.	Riverton
Donworth, Geo.	Seattle
Douglas, J. F.	Seattle
Douglas, James H.	Seattle
Douglas, S.	Colville
Dovell, W. T.	Seattle
Drain, James A.	New York City
Dudley, F. M.	Spokane
Dunbar, R. O.	Olympia
Dye, R. M.	Davenport
Earle, Dan	Seattle
Easterday, J. H.	Olympia
Edge, Lester P.	Spokane
Edsen, Eduard P.	Seattle
Emerson, W. M.	Chelan
Emmons, R. W.	Seattle
Englehart, Ira P.	North Yakima

Eskridge, Richard Stevens.....	Seattle
Eveland, G. D.....	Everett
Fairchild, H. A.....	Bellingham
Falknor, A. J.....	Olympia
Farmer, E. M.....	Seattle
Farrell, C. H.....	Seattle
Faucett, R. J.....	Everett
Fay, John P.....	Seattle
Felger, W. W.....	Seattle
Fenton, James E.....	Seattle
Field, H. H.....	Seattle
Fitzpatrick, John L.....	Seattle
Flueck, Edwin H.....	Seattle
Fogg, Chas. S.....	Tacoma
Follmer, Elmer S.....	Seattle
Folson, H. D., Jr.....	Seattle
Force, H. C.....	Seattle
Foutz, Will H.....	Dayton
Frater, A. W.....	Seattle
Frost, J. E.....	Olympia
Fullerton, M. A.....	Olympia
Fulton, Walter.....	Seattle
Garland, Hugh A.....	Seattle
Gaston, O. C.....	Everett
Gav, W. R.....	Seattle
Gephart, James M.....	Seattle
Geraghty, J. M.....	Spokane
Gilbert, W. S.....	Spokane
Gilliam, Mitchell.....	Seattle
Glass, Chester.....	Spokane
Gleason, Chas. S.....	Seattle
Gnagey, U. D.....	Port Townsend

Godfrey, James J.	Seattle
Godman, M. M.	Seattle
Gordon, Carroll	Spokane
Gordon, M. J.	Spokane
Gorham, W. H.	Seattle
Gose, C. C.	Walla Walla
Gose, M. F.	Pomeroy
Gowan, Richard	Seattle
Granger, H. T.	Seattle
Graves, Carol B.	Seattle
Graves, Will G.	Spokane
Gray, John G.	Seattle
Gregg, A. H.	Spokane
Green, J. Lindley	Seattle
Greene, Roger S.	Seattle
Griffiths, Austin E.	Seattle
Griggs, H. S.	Tacoma
Grimshaw, W. A.	Wenatchee
Grinstead, Loren	Seattle
Grosscup, B. S.	Tacoma
Guie, E. H.	Seattle
Guie, J. A.	Seattle
Hadley, H. E.	Olympia
Haight, Jas. A.	Seattle
Hall, Calvin S.	Seattle
Hanford, C. H.	Seattle
Happy, Cyrus	Spokane
Hardman, Max	Seattle
Hardin, Thos. B.	Seattle
Harmon, U. E.	Chehalis
Harriman, Henry R.	Seattle
Harris, Chas. P.	Seattle
Harris, James M.	Tacoma

Hart, John B.	Seattle
Hartman, John P.	Seattle
Hartson, M. T.	Spokane
Harvey, Walter M.	Tacoma
Hastings, H. H. A.	Seattle
Hathway, Howard	Everett
Heaton, O. G.	Seattle
Hess, John B.	Spokane
Heyburn, E. M.	Spokane
Heyburn, W. B.	Wallace, Idaho
Hibschman, H. J.	Davenport
Higgins, John C.	Seattle
Higgins, Thos. B.	Spokane
Hills, Chas. S.	Seattle
Hill, Wm. Lair	Seattle
Hindman, W. W.	Spokane
Hinkle, J. D.	Spokane
Hodge, G. J.	Seattle
Hodgdon, C. W.	Hoquiam
Holbrook, Paul	Seattle
Holcomb, O. R.	Ritzville
Holland, Geo. F.	Spokane
Holt, R. S.	Tacoma
Horan, J. E.	Everett
Hovey, C. R.	Ellensburg
Howe, James B.	Seattle
Hoyt, Chas. W.	Spokane
Hoyt, Henry M.	Seattle
Hoyt, John P.	Seattle
Hubbard, H. Frank	Wenatchee
Hudson, R. G.	Tacoma
Hughes, E. C.	Seattle

Hughes, H. DeHart	Seattle
Hughes, P. D.	Seattle
Hulbert, Robt. H.	Seattle
Humphries, John E.	Seattle
Humphrey, H. H.	Spokane
Humphrey, W. E.	Seattle
Huneke, Wm. A.	Spokane
Hurd, M. P.	Mt. Vernon
Hutchinson, R. G.	Seattle
Hutson, Chas. T.	Seattle
Irwin, G. M.	Alaska
Irwin, L. J.	Friday Harbor
Jacobs, Orange	Seattle
Jeffrey, F. M.	Seattle
Joab, Albert E.	Tacoma
Jones, Rich. S.	Seattle
Jones, W. L.	North Yakima
Johnson, H. L.	Tacoma
Johnstone, Hamilton R.	Spokane
Joiner, Geo. A.	Mt. Vernon
Kane, M. F.	Seattle
Kane, James H.	Seattle
Kauffman, Ralph	Ellensburg
Kellam, A. G.	Spokane
Keith, W. C.	Seattle
Kelleher, John	Seattle
Kellogg, J. A.	Bellingham
Kellogg, J. A.	Seattle
Kennan H. L.	Spokane
Kennedy, J. Y.	Everett
Kerr, James A.	Seattle
Kershaw, T. R.	Bellingham

King, J. J.	Leavenworth
Kimbell, P. W.	Pullman
Kipp, R. H.	Colfax
Kleber, John C.	Spokane
Kreite, Edward C.	Seattle
Kuhn, Joseph	Pt. Townsend
Laffoon, R. F.	Tacoma
Lambuth, W. D.	Seattle
Lane, W. D.	Seattle
Langford, F. E.	Spokane
Langhorne, M. A.	Tacoma
Larrabee, John	Seattle
Leehey, Maurice	Seattle
Lehman, Robt. B.	Tacoma
Leise, Wilford M.	Everett
Leo, John	Tacoma
Leuders, Henry W.	Tacoma
Levy, Aubrey	Seattle
Lewis, James Ham.	Chicago, Ill.
Lindsley, J. B.	Spokane
Linck, John W.	Tacoma
Linn, O. V.	Olympia
Locke, D. W.	Everett
Loomis, Henry B.	Seattle
Loveday, Walter	Tacoma
Lovell, G. E.	Ritzville
Lund, C. P.	Spokane
Lund, Edna B.	Tacoma
Lund, R. H.	Tacoma
Lung, Henry W.	Seattle
Lyter, M. M.	Seattle
Macdonald, E. C.	Spokane
Mackinson, Alex. M.	Seattle

Main, John F.	Seattle
Martin, Wm.	Seattle
Mattison, Thos.	Tacoma
Meade, A. E.	Olympia
Mcier, Walter F.	Spokane
Mendenhall, Mark F.	Spokane
Merritt, H. D.	Spokane
Miller, C. E.	South Bend
Miller, Chester F.	Dayton
Miller, Eugene	Spokane
Miller, Fred	Spokane
Millett, Byron	Olympia
Million, E. C.	Seattle
Mires, Austin	Ellensburg
Moore, Ben. L.	Seattle
Moore, H. D.	Seattle
Moore, James Z.	Spokane
Moore, W. H.	Seattle
Morris, Geo. E.	Seattle
Moser, B. B.	Seattle
Mount, Wallace	Olympia
Mulvahill, Robert	Everett
Munday, Chas. F.	Seattle
Munn, Geo. Ladd	Seattle
Munter, Adolph	Spokane
Murphine, Thos. E.	Seattle
Murphy, Jas. B.	Seattle
Murray, Chas. A.	Spokane
Murray, S. G.	Seattle
Myers, H. A. P.	Seattle
McClinton, James G.	Pt Angeles
McClure, Walter A.	Seattle
McCord, E. S.	Seattle

McCrosky, R. L.	Colfax
McGilvra, O. C.	Seattle
McLain, Henry	Mt. Vernon
McLaren, W. G.	Everett
McLean, W. E.	Seattle
McMicken, Maurice	Seattle
Nash, Frank D.	Tacoma
Neagle, John L.	Seattle
Neal, C. H.	Davenport
Nelsen, C. Morup	Wilbur
Neterer, Jeremiah	Bellingham
Nichols, J. W. A.	Tacoma
Noon, Henry S.	Seattle
Nuzem, N. E.	Spokane
Ogdon, R. D.	Seattle
Oldham, Robt. P.	Seattle
Onstine, Burton J.	Spokane
Padgett, B. E.	Everett
Page, T. D.	Seattle
Palmer, E. B.	Seattle
Palmer, Victor E.	Seattle
Parker, Alfred E.	Seattle
Parker, Emmett N.	Tacoma
Parker, John R.	Seattle
Parsons, Galusha	Tacoma
Patterson, Chas. E.	Seattle
Pattison, John	Colfax
Pedigo, John H.	Walla Walla
Peacock, John A.	Spokane
Peck, H. E.	Seattle
Pelletier, John H.	Spokane
Pendarvis, C. R.	Seattle
Pendergast, E. K.	Conconully

Perringer, Virgil	Bellingham
Perry, John H.	Seattle
Peters, W. A.	Seattle
Peterson, Fred H.	Seattle
Peterson, N. S.	Seattle
Pickrell, J. N.	Colfax
Pierce, Frank	Seattle
Piles, S. H.	Seattle
Place, Victor M.	Seattle
Porter, N. S.	Olympia
Post, Frank T.	Spokane
Powell, J. H.	Seattle
Prather, L. H.	Spokane
Pratt, Peter L.	Seattle
Pratt, W. H.	Tacoma
Presby, W. B.	Goldendale
Preston, Harold	Seattle
Price, James G.	Seattle
Pryun, Edward	Ellensburg
Quinby, Frank	Anacortes
Quin, Patrick F.	Spokane
Ramsey, H. J.	Seattle
Rawson, Z. B.	Seattle
Reavis, James B.	Seattle
Reed, J. F.	Seattle
Reeves, Frank	Wenatchee
Reeves, Fred	Wenatchee
Reid, Geo. T.	Tacoma
Reinhart, C. S.	Olympia
Remington, Arthur	Olympia
Rensberg, C. E.	Seattle
Reynolds, A. H.	Walla Walla
Reynolds, C. A.	Seattle

Rhodes, Harry A.	Spokane
Rice, A. E.	Chehalis
Richardson, W. E.	Spokane
Riddle, C. A.	Seattle
Rinehart, W. V.	Seattle
Ripley, G. G.	Spokane
Robb, Bamford H.	Seattle
Robert, J. W.	Seattle
Robinson, J. W.	Olympia
Rochester, G. A. C.	Seattle
Rockwell, T. D.	Olympia
Rokes, J. A.	Seattle
Romaine, J. W.	Bellingham
Ronald, J. T.	Seattle
Root, Milo A.	Seattle
Ross, E. W.	Olympia
Rosslow, Joseph	Spokane
Rowland, H. G.	Tacoma
Rozema, Martin	Seattle
Rudkin, Frank H.	Olympia
Rummens, G. H.	Seattle
Rupp, Otto B.	Walla Walla
Ryan, John E.	Seattle
Sauter, O. E.	Seattle
Saville, O. J.	Spokane
Scott, W. D.	Spokane
Seabury, I. H.	Sedro-Wooley
Shackleford, John A.	Tacoma
Shaffer, C. Will	Olympia
Shaffrath, Paul	Seattle
Shank, Corwin S.	Seattle
Sharp, R. G.	Olympia
Sharpstein, John L.	Walla Walla

Sheeks, Ben.	Aberdeen
Sheller, T. H.	Seattle
Sheller, Wm.	Everett
Shepard, Thom. R.	Seattle
Shepard, Chas. E.	Seattle
Shine, P. C.	Spokane
Shippen, Joseph	Seattle
Shorett, J. W.	Everett
Shorts, Bruce C.	Seattle
Simpson, James M.	Spokane
Stemmons, A. L.	Ellensburg
Smith, Carl J.	Seattle
Smith, Del. Cary	Spokane
Smith, Sol.	South Bend
Smith, Winfield R.	Seattle
Snell, Bertha M.	Tacoma
Snell, Marshall K.	Tacoma
Snell, W. H.	Tacoma
Snook, Herbert E.	Seattle
Snyder, Edgar C.	Seattle
Southard, Frank S.	Seattle
Spirk, Chas. A.	Seattle
Spooner, Chas. P.	Seattle
Squire, Watson C.	Seattle
Stalleup, John C.	Tacoma
Staser, C.	Ritzville
Steele, E. N.	Olympia
Steele, Sam'l H.	Seattle
Stedman, Livingston B.	Seattle
Steiner, G. E.	Seattle
Steiner, R. S.	Waterville
Stern, Sam'l R.	Spokane
Stewart, James	Port Angeles

Stiles, Theo. L.	Tacoma
Stoll, W. T.	Spokane
Stratton, W. B.	Seattle
Sturdevant, R. E.	Dayton
Sullivan, Potter C.	Seattle
Sumner, Sam R.	Wenatchee
Swindle, Anthony J.	Tacoma
Tait, Hugh A.	Seattle
Tallman, Boyd J.	Seattle
Tanner, W. V.	Seattle
Taylor, E. Win.	Conconully
Teats, Govnor	Tacoma
Tennant, A. J.	Seattle
Terhune, R. S.	Seattle
Thayer, W. J.	Spokane
Thompson, H. R.	Seattle
Thompson, R. E.	Seattle
Thompson, Will H.	Seattle
Thorgrinsson, O. B.	Seattle
Todd, E. E.	Seattle
Tolman, W. W.	Spokane
Totten, Wm. D.	Seattle
Town, Ira A.	Tacoma
Trefethen, D. B.	Seattle
Troy, P. M.	Olympia
Trimble, W. P.	Seattle
Tucker, O. A.	Seattle
Tucker, Wilmon	Seattle
Turner, George	Spokane
Turner, L. T.	Seattle
Vance, T. M.	Olympia
Van Dyke, John B.	Seattle

Vinconhaler, E. A.	Seattle
Voorhees, C. S.	Spokane
Voorhees, Reese H.	Spokane
Wakefield, W. J. C.	Spokane
Walker, Geo. H.	Seattle
Wall, J. P.	Seattle
Waller, J. L.	Seattle
Warburton, S.	Tacoma
Warren, W. T.	Davenport
Watkins, Walter Hugh	Seattle
Waugh, J. C.	Seattle
Webster, J. Stanley	Spokane
Weir, Allen	Olympia
Weistling, Frank	Seattle
Wells, S. A.	Spokane
Welsh, J. T.	South Bend
Welsh, W. J.	Roslyn
Welty, H. J.	Pullman
Wheeler, L. H.	Seattle
Whitlock, J. C.	Seattle
Whitson, Edward	Spokane
Wickersham, James	Fairbanks, Alaska
Wiley, Chas. S.	Seattle
Wilhelm, Honor L.	Seattle
Williams, J. A.	Ellensburg
Williams, Louis	Seattle
Williams, W. Mervyn	Seattle
Williamson, Geo. G.	Tacoma
Wilshire, W. W.	Seattle
Wilson, Harvey E.	Seattle
Winders, C. H.	Seattle
Winfree, W. H.	Spokane
Woods, Ralph	Tacoma

Wooten, Dudley G.	Seattle
Worden, W. A.	Tacoma
Wray, Wm.	Seattle
Wright, Elias A.	Seattle
Wright, Geo. E.	Seattle
Wynn, Jr., W. H.	Aberdeen
Zent, W. W.	Ritzville

PROCEEDINGS

REPORT OF THE MEETING OF THE WASHINGTON STATE BAR ASSOCIATION, HELD AT SEATTLE, JULY 11, 12 AND 13, 1907.

JULY 11, 1907, 10:50 A. M.

PRESIDENT HUGHES—Members of the Bar Association will please come to order. The first order of business will be the report of the Secretary.

SECRETARY'S REPORT.

Up until a year ago, our constitution provided for an admission fee of five dollars and annual dues of one dollar; any member in arrears in dues five years should be dropped from the membership rolls.

This was the only association I could find that permitted its members to remain in good standing for five full years without the payment of the regular fixed dues.

The constitution was changed at our last meeting, making the admission fee three dollars and fixing the annual dues at two dollars; the non-payment of dues suspending a member from the active list.

The evidence at hand now is that this plan will work very well, and by next year we should have near unto a thousand active progressive members, as capable and as reputable a set of lawyers as can be found in any state.

Both of our Federal Judges take a strong, personal, active interest in the Association; all seven members of our Supreme Court Bench belong to this Association and take pride in its upbuilding; all but four of the thirty-two Superior Court Judges are on our active list, together with the number of leading lawyers of the state who take a personal interest in the welfare of this organization, is sufficient to make a membership in this Association an honor.

The report of a year ago showed a membership of.....	247
Number died.....	4
Removed from state.....	6
Removed or withdrawn, not before reported.....	10
Withdrawn	1
Quit the profession.....	3
	<hr/> 24
	<hr/> 223
Joined since last report.....	106
Reinstated to active membership.....	18
Reinstated but not to active membership.....	25
	<hr/>
Total membership	372
Of those joining at our last meeting there have not paid admission fee	10
In arrears for years prior to 1906.....	68
In arrears for years 1906.....	25
	<hr/> 103
Active membership	269
Dues and fees collected during year.....	\$668.50
Expenses of office.....	561.50
	<hr/>
Turned over to Treasurer.....	\$107.00
July 10, 1907.	C. WILL SHAFFER, Secretary.
NOTE.—Above report was made.	
New names have been added to membership to number of.....	139
Reinstated to active membership.....	39
	<hr/>
Total active membership at time of going to press, Oct. 15....	447
Total membership Oct. 15.....	550

PRESIDENT HUGHES—What will you do with the report of the Secretary? If there is no objection it will be accepted and placed on file. I would like to make a suggestion to the Secretary that, in making up the printed record of the proceedings, he revise his report so as to include all who may have become members since the report was made or during this meeting. There are several reasons which will be apparent a little later why we are anxious to have the membership as large as pos-

sible in the Bar Association, at the conclusion of this meeting.

The next order will be the report of the Treasurer.

SECRETARY SHAFFER—The Treasurer delivered to me his report as he will not be able to be here until this evening and he asked me to read the report for him.

TREASURER'S REPORT.

Olympia, Washington, July 10, 1907.

To the Officers and Members of the Washington State Bar Association:

Gentlemen—I have the honor to present for your consideration this, my annual report, as Treasurer of this Association, for the fiscal year, ending July 10, 1907.

RECEIPTS

To balance as per last report.....	\$ 70.10
To received from Secretary.....	107.00
Total	<u>\$177.10</u>

DISBURSEMENTS

By paid out.....	<u>\$000.00</u>
To balance cash on hand.....	\$177.10

Respectfully submitted,

NATHAN S. PORTER, Treasurer.

PRESIDENT HUGHES—If there is no objection to the Treasurer's report as read, it will be accepted and filed.

We will now have the reports of the committees.

Is the Chairman of the Uniformity of State Laws Committee prepared to make a report. Mr. Charles R. Shepard is Chairman of that Committee.

REPORT OF COMMITTEE ON UNIFORMITY OF STATE LAWS.

To the Washington State Bar Association:

The Committee on Uniformity of State Laws respectfully reports that since the last meeting of this Association there has been much activity in promoting uniformity of legislation, both national and state. While national legislation of this character does not fall within this Committee's province, it is well to briefly refer to such as has been passed recently to give the Association a summary review of the pres-

ent state of the movement. Within the past year four important bills in congress, all tending to bring about uniformity of law and of commercial dealings throughout the country, where there was before much diversity and frequently conflict and inconsistency of law and of commercial dealings in different states, have become laws. These are the railroad rate bill, the pure food bill, the meat inspection bill, and the naturalization bill. Members of the Association will doubtless understand the general scope and purpose of these bills and it is not necessary to summarize them. It is enough to say that each of them requires, and if properly enforced, will compel an absolute uniformity and absolute reliability as to the very important matters, indicated by their titles. In the very nature of things all persons applying for citizenship of our common country should be required to submit to the same tests and to go through the same proceedings in every court in the country; transportation charges should be uniform under uniform conditions, and foods and drugs should be protected from adulteration or from misbranding by the same methods and with the same sanctions everywhere, and the inspection of meats should be equally rigid in every place in the country where they are prepared for sale and export. Of course, as to foods, drugs and meats, and as to railroad transportation the legislation of congress cannot reach intrastate business but only interstate business; nevertheless, these federal statutes tend to bring about uniformity and will strengthen the hands of those who are working for uniformity of legislation within the limits of the state, besides compelling it in interstate business.

Coming to the subject which lies expressly within the province of this committee, to-wit, efforts to bring about uniformity of state statutes, the committee has to report that at the last or sixteenth annual conference of the commissioners on uniform state laws, held at St Paul, August 25-29, 1906, two very important bills, which have been before the conferences of the last three years, were considered and received their final shape. These were the proposed bill to make uniform the law of sales and the law of warehouse receipts. Each of these bills had been previously considered both by the proper committees of commissioners and by the conference itself, and were considered again and amended at the conference of 1906. This committee cannot summarize these bills within reasonable space, but it has a considerable number of copies for distribution and files copies of them with the Secretary of the Association. Any member desiring a copy of either of these bills can obtain it from the chairman of the committee so long as the supply lasts. Two members of the committee have been uniform law commissioners from the state for the past two years and after considerable

study of the subject they have no hesitation in saying that these bills are very carefully drawn, are clear, comprehensive and as concise as in the nature of the case a codification covering these large and important subjects can be made. In the opinion of the committee these are among the subjects on which uniformity of law is most desirable and the advocates of uniform state laws take their stand here upon their strongest ground. There are and always must be local differences on some subjects influenced by local questions of climate, productions, occupations of the people and methods of business which will reflect themselves in the differences in state statutes which can never be eliminated as long as there are states; but on other subjects there is such inherent and inevitable similarity in the nature of the transactions involved that the law ought to be uniform throughout the country and throughout the commercial world. The law of bills and notes is the best example of this class of subjects and the remarkable success of the uniform law on that subject is a very strong argument in favor of the new bill. The law of sales and the law of warehouse receipts and the law of bills of lading are subjects on which there is almost as complete a need and as strong a tendency toward uniformity. Your committee therefore recommends that this Association give the weight of its approval to the proposed bills on sales and warehouse receipts.

Each of these bills was submitted by the uniform law commissioners of this state to the legislature at its recent session and the chairman of this committee in person advocated these bills before the judiciary committee, but both of them were rejected. The legislature in the brief period of its limited session and under the pressure of a large number of other important subjects which were before it at that session evidently had not time to consider the matter as carefully as it should have done. We believe that the recommendation of this Association will have greater weight with the next session of the legislature and we trust that we may have it.

In the report of this committee to the Bar Association in its 1906 meeting the committee set forth at considerable length what had been done up to that time to bring about a uniform law on the subject of divorce and the annulment of marriage. This subject is within the scope of the conferences of the uniform law commissioners, but it has not occupied the attention of those conferences to more than a very limited extent. An independent movement, largely promoted by laymen as well as lawyers, resulted in the uniform divorces congress mentioned in our last report. The first meeting of that congress was held at Washington, D. C., on February 19-22, 1906, and the resolutions adopted were set out in full in our last report. An adjourned session

of the congress was held in Philadelphia on November 13-14, 1906. It resulted in the adoption of a proposed act, of which we file a copy with the Secretary. The Governor appointed the three uniform law commissioners as delegates to that congress, but there was no legislative authority for such appointment or for meeting the expenses of the delegates to the congress, and none of the commissioners felt warranted under the circumstances to attend that congress at either session. There are a number of good provisions in the proposed uniform law, notably those requiring two years' residence of the plaintiff in the state in which the divorce suit is brought if the cause of divorce does not arise therein, stringently safeguarding the defendant's right to notice of the suit when service is by publication, so far as such notice can possibly be communicated to him, and requiring a delay of one year after the hearing before the entry of the final and irrevocable decree of divorce. But in other respects the bill is defective, especially in that it does not provide for a division of property or for alimony. For this reason the uniform law commissioners did not feel that they could recommend to the legislature the adoption of this bill, and therefore nothing was done with it in the last session.

We conclude by renewing our earnest recommendation that the Association as a body and its individual members use their influence with the next legislature in favor of the proposed acts on the law of sales and of warehouse receipts and that the legislature also be recommended to make proper provision, which it has not yet done, for continuing the active participation of the uniform law commissioners of the state in the proceedings of the annual conferences from year to year.

Respectfully submitted,

CHARLES E. SHEPARD, Chairman.

ALFRED BATTLE.

O. R. HOLCOMB.

JOHN H. POWELL.

A. L. BLACK.

Seattle, Wash., August 14, 1907

C. WILL SHAFFER, Esq., *Secretary of the State Bar Association, Olympia, Washington:*

My Dear Sir—I suppose the proceedings of our recent State Bar meeting are not yet in print. If so, I wish you would add a footnote to the report of the uniform law committee to the following effect:

Since last year, Illinois, New Mexico and West Virginia have adopted the negotiable instruments law. This makes in all thirty-three states, territories, and District of Columbia, in which that law has been enacted. The uniform sales act has been enacted in Arizona

Connecticut and New Jersey. The warehouse receipt act^d has been enacted in Connecticut, Massachusetts, New Jersey, Illinois, Iowa and Montana.

Yours truly,

CHARLES E. SHEPARD.

PRESIDENT HUGHES—What will you do with the report of this committee. If there is no objection it will be received, adopted and placed on file.

Other committees were called and time for presenting report fixed.

The Committee on Publications, Arthur Remington, chairman.

SECRETARY SHAFFER—Mr. Remington has sent in his report and has asked me to see the other members of the committee, but I have been so busy that I could not see them. I will read his report and if there are any other members of the committee here who desire to dissent they may do so.

Olympia, Wash., July 6, 1907.

To the Secretary Washington State Bar Association:

It has been impracticable to hold a meeting of the Committee on Publication. On behalf of the committee, the undersigned report as follows:

The publication of the annual report was not completed and ready for distribution until about the first of October, 1906. This delay was due entirely to the practice of the authors of papers of failing to leave their papers with the Secretary and taking them home for the purpose of revision. This revision can best be done from the proof sheets, which are always submitted, and we strongly recommend that all papers be left on the Secretary's desk as soon as they have been read, and that the Secretary be instructed to deliver the papers to the Chairman of the Committee on Publication immediately at the close of the meeting. Much time can thus be saved and the risk of loss of papers lessened.

We believe that a sufficient number of the annual reports should be bound in substantial covers to supply the demand for all exchanges with other associations, and the demands of members wishing to pay for the cost of binding. Covers in the present form have been forced on the committee by lack of sufficient appropriation, and are unsatisfactory to many of the members, who would prefer to pay the cost of

a permanent binding. The paper covers are not up to the standard of our exchanges, and reflect no credit upon our Association.

Respectfully submitted,

ARTHUR REMINGTON, *Chairman.*

PRESIDENT HUGHES—The Committee on Obituaries, W. H. Pratt, chairman.

MR. PRATT—I have not had time to see the other members of the committee, but from correspondence with the Secretary and my own knowledge of the fact, we have to report that there have passed away during the year members of the Association, as follows: Judge W. H. Harris of Tacoma, died July 23rd, 1907; Hon. B. F. Hueston of Tacoma, died May 6th, 1907; Judge Thad. Huston, who died June 25th, 1907, and Judge George C. Hatch, who died last fall.

In memory of our departed associates I have asked Judge F. N. Parker of Tacoma to deliver the usual obituary upon Judge Harris; Hon. T. L. Stiles, upon the life of Judge Thad. Huston; T. W. Hammon of Tacoma, late law partner of B. F. Hueston and Marshall K. Snell former schoolmate and life-long friend, to talk to us upon the life and works of our departed friend, B. F. Hueston. I will also ask Judge Morris to deliver an obituary upon the late Judge Hatch. I hardly think he is here yet, but he will probably be here a little later.

PRESIDENT HUGHES—If there is no objection the report of the committee will be adopted.

Mr. Secretary, a time will be designated later for hearing the remarks in memory of the deceased members of our Association. And if the chairman of the committee will indicate to the Secretary when these gentlemen appointed to deliver eulogies can be present it will assist us in fixing the time.

The next is the Special Committee on Membership. Judge Hanford was a member but he is out of the city. The next member is Judge Whitson.

JUDGE WHITSON—Mr. President, the only report the committee has to make is that in accordance with the resolution at the last meeting, it prepared and sent a circular letter to the members of the bar; that is, it was prepared by Judge Hanford and sent to various members of the committee, and these letters have been sent out.

PRESIDENT HUGHES—The next is the Committee on Juvenile Court, Judge Frater, chairman.

JUDGE FRATER—Mr. Chairman, some weeks ago I corresponded with Judge Kennan and some other members of the committee requesting that they prepare a report, a report of subsequent proceedings. Last year I prepared a report and I wish some one else to prepare one for this meeting. I don't see any of the members present here, and I have not submitted this report to the committee, however I will read it and it can be submitted to them later on.

Seattle, Wash., July 2, 1907.

To the Washington State Bar Association:

Gentlemen—Your Committee on Juvenile Courts begs leave to submit the following report:

Your committee at the last session of the legislature, either collectively or as individuals, caused to be introduced or gave their assistance to the enactment of the following laws, all of which relate directly or indirectly to the welfare of the children or youth of our state and in a measure supplement or extend or make more effectual the work of the Juvenile Court:

House bill No. 4, introduced by Mr. Beebe and found on page 16 of the Session Laws for this year, and being "An Act to provide for the punishment of parents or persons responsible for, or contributing to, the delinquency of children of the age of 17 years or under." This bill is the same one that was introduced under the direction of your committee two years ago and after passing the House, failed of passage in the Senate. This year the bill passed without any opposition to speak of. This shows the growth of public sentiment in our state.

House bill No. 62, introduced by Mr. Hanson, being "An Act relating to the offense of unlawful enticement and providing a penalty," found on page 46 of the Session Laws for this year.

House bill No. 223, introduced by Mr. Beebe, being "An Act to prevent and punish family desertion or non-support and to provide for support bonds and for suspension of trial and sentence," found on page 199. For probably ten years or more, repeated efforts have been made to secure passage of this or a similar law by our legislature, and this year very little opposition was made against it.

House bill No. 65, introduced by Mr. Hanson, being "An Act amendatory of the Juvenile Court law and providing for the payment of probation officers and authorizing the courts to inquire into the ability of the proper person to support delinquent or neglected children and to require them, if found able, to do so," found on page 208 of the Session Laws for this year.

House bill No. 162, also introduced by Mr. Hanson, being "An Act to regulate the employment of child labor and to prohibit the employment of persons under the age of 19 years as public messengers," etc., found on page 238.

House bill No. 309, introduced by House Committee on Public Morals and commonly known as the "Anti-Cigarette Law" found on page 293.

House bill No. 202, introduced by Mr. Bassett, being "An Act relating to the compulsory education of children between the ages of 8 and 15 years and forbidding the employment of children during the session of the public schools," found on page 569.

The thanks of this committee and this Association are certainly due Messrs. Beebe, Hanson and Bassett and to the House Committee on Public Morals, as well as to many other members of both branches of the legislature, who gave these gentlemen their staunch and undivided support, for their zeal and success in securing the enactment of these various bills into law.

Your committee, however, is mindful of the fact that laws alone will not remedy evils nor enforce themselves, and that there is great opportunity and indeed great responsibility upon this Association to inculcate upon its members and through them, upon the public, respect for law as law and the enforcement of law without fear, favor or exception because it is the law of the land. Our capacity for self-government is determined by critics and must also finally be determined by ourselves by the extent to which our laws are enforced or disregarded.

Respectfully submitted,

Committee.

PRESIDENT HUGHES—If there is no objection the report will be adopted and filed with the secretary.

The next is the Committee on Corporation, George F. Douglas, chairman.

SECRETARY SHAFFER—Mr. Douglas informed me that he could not be here and left his report. I will read it if you desire.

PRESIDENT HUGHES—Proceed.

REPORT OF THE COMMITTEE ON CORPORATIONS OF THE WASHINGTON STATE BAR ASSOCIATION.

Your committee appointed by the President of the Washington State Bar Association begs leave to report as follows:

The corporation laws of the State of Washington have been made piecemeal, and, as a result, the corporation code is incomplete and is not what might be called a well-rounded code, nor is it a code abreast of the times from a corporation standpoint.

It was proposed to have our committee frame a new corporation code and to have this code, when prepared, submitted to the legislature. It was not possible, however, to have meetings of our committee, owing largely to the fact that the members of the committee reside in various sections of the state, and hence no action was taken toward the preparation of a code.

To show the need of a new corporation code, we wish to call your attention to some points in our laws which are indefinite or incomplete.

Sections 7058, Pierce's Code, reads as follows: "When the certificate shall have been filed, the persons who shall have signed and acknowledged the same, and their successors, shall be a body corporate and politic in fact and in name by the name stated in their certificate." What certificate? The law does not require the filing of any certificate, but requires only the filing of articles of incorporation. As a result, lawyers have assumed that the word "certificate" in this section means the word "articles."

Sections 7055 and 7056, Pierce's Code, provides for the filing of a list of officers of the corporation, a very useful provision, but provides no penalty for failure to file the list, and as a consequence these sections which should be observed are very seldom observed.

Section 7054, Pierce's Code, was intended to prevent the duplication of corporate names. If a corporation has been dissolved, so that the corporate name is no longer used by any corporation in this state, this name cannot be used by any corporation. The corporation acts of

Massachusetts provide that a corporation shall not assume the name of any domestic or foreign corporation carrying on business in the Commonwealth at the time of the organization or within three years prior thereto, except with the consent of the existing corporation. There should be some such provision in the laws of our state.

Section 7059, Pierce's Code, requires the trustees of a corporation to take an oath as provided by the laws of the state. There is no oath provided by the laws of the state; as a consequence, lawyers have been constructing an oath according to their own ideas, or else have taken the position that, no oath being provided, it is not necessary qualification for a trustee.

Section 7068, Pierce's Code, in relation to the powers of a corporation to issue negotiable paper is indefinite.

Section 7070, Pierce's Code, makes it the duty of the trustees of a corporation to keep certain records of the stockholders,—a very reasonable and useful provision,—but it provides no penalty for failure to keep the record.

Section 6, page 140, Laws of 1907, provides for an annual license fee of fifteen dollars. If articles of incorporation are filed on the 30th day of June, the license fee for one day's existence is still \$15.00. To be at all equitable, the fee should be proportioned in some way to the length of time the license is to run, or the license should run one year from its date.

There is no provision in our corporation laws for the consolidation of two corporations, which is surely a very useful provision and is a provision usually found in new corporation codes.

There is no provision in our laws for the issuance of more than one kind of stock, and, as a consequence, corporations have been issuing various kinds of preferred stocks based entirely on agreements among the stockholders.

There is no provision in our laws for the holding of trustees' meetings outside the state, as is usual in the later corporation codes.

Our laws do not provide for annual reports as is now usual in corporation acts.

Our law is inequitable in that it requires a fee of twenty-five dollars from each corporation irrespective of the amount of the capital stock of the corporation.

There is no provision in our statutes for cumulative voting, as is usual in the later corporation acts.

There is no provision in our statutes for extending the time of corporate existence, but this seems to be prevented by our constitution.

In many other particulars, our present corporation code is not in

harmony with the newer corporation codes of the other states in the Union.

There has been a great growth in the number of corporations in the last few years, and the corporation is now playing a more important part in the business world than at any previous time. The State of Washington should have a corporation code that will fully cover the new conditions in the corporation field. We would therefore make the following recommendations:

1. That a committee be appointed for the express purpose of drafting a new corporation code for the State of Washington.

2. That this committee prepare a new corporation code for the State of Washington and report the same back to the next annual meeting of this Association.

3. That it is the sense of this Association that a new corporation code should be adopted by the next legislature of the State of Washington, and that the Association pledges itself to use such means as are legitimate and proper to have the code which shall ultimately be adopted by this Association passed by the legislature of the State of Washington in 1909.

Respectfully submitted,

J. F. DOUGLAS.

THOS. B. HARDIN.

THE PRESIDENT—What will you do with the report of this committee?

A VOICE—I move that the report be adopted.

PRESIDENT HUGHES—I want to call attention to one statement in this report. As I understood it from the reading of the report, the statement is made that there is no law in this state to permit of trustees holding meetings outside of the state. Such a law I believe was passed in the last session of the legislature. * * * Also there is a new license law passed by the last legislature affecting corporations, which should be taken into consideration.

I think those corrections perhaps should be made in the report. And I want to call attention to the fact that the adoption of this report would provide for the appointment of a committee whose duty it would be to prepare a corporation code, that is to codify all the corporation laws, and proposing such amend-

ment to them as may be necessary, and to report at the next meeting of the Association upon such proposed legislation.

MR. SHANK—Mr. President, as to approving and placing on file the report of the committee with the recommendations and suggestions contained in it, some of which are good and some of which there is some question about—I make this suggestion that it seems to me, if we adopt this report it would place the Association on record as approving as a whole the particular things here mentioned.

PRESIDENT HUGHES—The report might be merely filed and any amendment might be made later on at the time of the appointment of the committee.

MR. POST—I move that this entire matter, Mr. President, this amendment, be referred to the Judiciary Committee for their report at the next meeting, next year. I don't think there is any hurry about the matter. I think there are members of the Association, perhaps a good many of them, who would like to make some suggestion to the committee, and perhaps some of us think that it is not necessary to codify the law at all. It seems to me that this matter should be referred and plenty of time taken before anything is done.

A VOICE—I second Mr. Post's motion.

SECRETARY SHAFFER—I wish to call attention to the fact that there is a recommendation in this report that a committee be appointed for the preparation of a corporation code, and we might adopt that much of it.

MR. POST—I don't think we want any code.

PRESIDENT HUGHES—The motion before the Association is that the report be received and placed on file. The amendment is that the report be received and referred to the Judiciary Committee and that that committee report at the next meeting of the Association.

MR. SHANK—As chairman having charge of that committee, I think it is hardly fair to me, and I think it should be read and filed.

JUDGE HOYT—Mr. President, I move that the report be laid on the table.

MR. STERN—I think we are most all agreed that we need some amendments to the corporation laws and that they need codifying. It seems to me that it is only proper that the report should be filed and that it is necessary that the action recommended in the report be taken. For one, I want to go on record as saying that I believe we need a codification of the corporation laws, and that we need certain amendments to those laws, and the earlier we get it done the better it will be. I am decidedly in favor of the adoption of this report some time during the session, and not of referring to the Judiciary Committee or tabling it.

A VOICE—I am in favor of the position taken by Judge Hoyt and desire to second this motion to lay it on the table.

PRESIDENT HUGHES—It is moved and seconded that the report be laid on the table. You will pardon me for making a remark. The members of this committee are lawyers of known reputation, and have undoubtedly given this report considerable time and attention. They have undoubtedly gone into the subject of the revision and codification of corporation law thoroughly, and I think it is a courtesy to them that Mr. Douglas, who had the matter in charge, should be present when this question is considered. I believe it is only fair to him that he should be present at that time.

MR. POST—I agree with Judge Hoyt that the matter had better be laid over. I agree with him because I do not think we need the corporation laws codified.

President Hughes put the motion and it was carried.

PRESIDENT HUGHES—The next is the Committee on Judicial Salary, M. J. Gordon, chairman.

MR. SHAFFER—The report has been handed to the Secretary. I will read it if you desire.

PRESIDENT HUGHES—Proceed.

Seattle, Wash., July 1, 1907.

To the Washington State Bar Association:

We, your committee appointed at the last session of the Association to urge legislation providing for the increase of judicial salaries in the State of Washington, beg leave to report as follows: We were able to secure the passage of an act increasing the salaries of supreme judges to \$6,000 per annum, and providing further that the counties of the first class might increase the salaries of superior judges within such counties to \$4,000 per annum. (See Laws of 1907, page 95.) The securing of the increase thus permitted in counties of the first class will now be more properly a matter for the attention of the various bar associations in such counties, and should be taken up with the commissioners, and secured before the expiration of the terms of the present judges.

Considerable opposition to any increase of the judicial salaries, and especially to the increase of the salaries of the superior judges, was encountered amongst various members of the legislature, and it is proper to say that the present legislation was only secured through the efforts of Hon. Will Graves of the senate judiciary committee, and various members of the King county delegation.

We suggest that this Association continue its work until the salaries of the superior judges in counties of the first class shall be fixed at \$5,000 per annum, and in other counties at \$4,000 per annum.

Respectfully submitted,

COMMITTEE.

PRESIDENT HUGHES—If there is no objection the report will be adopted and filed.

Are there any other matters left over which you wish to bring to the attention of the Association at this time, of such character that require early attention?

MR. TREFETHEN—I desire to say that we will have a banquet on Saturday night at the Stander hotel, and excursion tomorrow night. And in order that we may know approximately the number of persons who will be present at the banquet and

to provide accommodations, we would like to have the outside members register and as many of the Seattle members that can do so, indicate whether or not they will be present at the banquet.

The Alaska Steamship Company have tendered us the use of their new steamship *Chippewa* for use on an excursion around the Sound tomorrow night. After that, we will land at Luna park, and those who desire to have tickets for the attractions in the park will be provided with them and there will be free transportation back on the Ferry to the city.

On Saturday night the banquet will be given and all outside members are invited to be the guests of the Bar Association of the City of Seattle. In order that we may know approximately how many there will be to entertain, we would like to reiterate the request that the outside gentlemen sign the register.

MR. SHAFFER—Mr. President, I would like to say that we desire all those in attendance to register—to sign the book here and give their postoffice addresses, and I wish each one of the members to help us to get everybody to register. We don't want to skip any and we find that by looking up the register there are a number who haven't signed and of whom we have not the present address.

MR. SHANK—Mr. Chairman, in looking over the roll of members, I noticed the names of some former members of the bar who have met with misfortune since we last convened—by order of court probably—and it seems to me it would be a very fitting thing for this Bar Association to see that those names should not appear upon our roll. I therefore move you that the name of Paul C. Dormitzer be dropped from the roll of this Association. There are one or two others here about whom I have some question and that some other time we may get the

record of their misfortune so that we may make the necessary motion in regard to them, but I have this one name in mind particularly.

SECRETARY SHAFFER—Mr. President, in my report I included these, but I tried to put it in a mild way by saying "Had quit the profession." (Laughter)

PRESIDENT HUGHES—Is there a second to Mr. Shank's motion? Would it not be well to make your motion that all members of this Association who have been disbarred be dropped from the membership roll by the Secretary and let him ascertain who the persons are. I don't think it would be necessary to insert their names if you cannot recall the names of the persons who have been disbarred.

MR. SHANK—I presume the Secretary's report will cover this matter, but I don't know whether the Secretary has the authority to drop the names. I will make the motion now that all those who have been disbarred or may hereafter be disbarred, their names be dropped from the roll of membership as soon as that fact is brought to the attention of the Secretary.

SECRETARY SHAFFER—I do not think that motion is necessary at all. I think, under the constitution, a member loses his membership as soon as he is disbarred. Under the constitution, a person must be a member of the bar in order to become a member of the Association, and I assume when they are out of the profession they are also out of the Association. And I don't want to have our record encumbered by any reference whatever to the disbarments. That is the reason I put it in the form I did in the report. I don't see that the motion is necessary.

MR. SHANK—Under the statement of the Secretary, I will withdraw my motion.

PRESIDENT HUGHES—I agree with you that the less said about disbarments the better.

MR. REED—I think some motion ought to be passed in regard to suspended members, of those who have been disbarred, and I move you that all members of the bar who have been disbarred or suspended should cease to become members of the Association.

PRESIDENT HUGHES—Is there a second?

MR. HOWE—I agree with the Secretary that under our constitution there is no motion necessary to cause a suspended or disbarred member to cease from being a member of this Association.

PRESIDENT HUGHES—Do you make that as a point of order?

MR. HOWE—I do.

PRESIDENT HUGHES—I will sustain the point of order. (Applause)

SECRETARY SHAFFER—I want to add that I may not have knowledge of some of these names, but I will be glad to receive them from anybody, and I will assure them that no names will be left on that should not be there next time.

PRESIDENT HUGHES—Are there any other matters that require attention?

JUDGE BURKE—On behalf of the Seattle Bar, I believe that those members of the State Bar Association who reside in Seattle may, with perfect propriety request the American Bar Association to hold its meeting in 1909 at Seattle. And, having that in view, Mr. President, I now move you that a committee be appointed to prepare a resolution with that end in view, to be submitted to this Association either this afternoon or tomorrow, or at such time as may be thought proper by the chairman of the committee to be appointed.

JUDGE MORRIS—I second the motion.

A VOICE—I desire to second it also.

PRESIDENT HUGHES—It is moved by Judge Burke and duly seconded, that the Chair appoint a committee of three to prepare a resolution requesting the American Bar Association to hold its meeting here in 1909. Are there any remarks?

(There being no remarks, the motion was duly put and carried unanimously.)

PRESIDENT HUGHES—I will appoint on that committee Judge Burke, Mr. Holt and Judge Parker.

I would like to suggest that it might expedite the matter to appoint a special Nomination Committee to canvass among the members of the Association for the purpose of ascertaining what members of the Association would or could attend the meeting of the American Bar Association, to be held in Portland, Me. on the 26th, 27th, and 28th of August. We have heretofore had great difficulty in finding persons to make the trip at this season of the year. If we are going to adopt the resolution asking them to meet with us, we perhaps should have a representative attendance at the American Bar Association to present the resolution and to urge the claim of this state and city for the place of holding the meeting in 1909. Attention will have to be given this matter if we are to be successful, because an effort is being made by the city of Los Angeles to have the meeting next year or year after in that city. I think that it would be well to appoint a special committee, perhaps a committee of three, to confer with the members of the Bar here and ascertain who would attend that meeting to the end that a selection of representatives may be made with reference to a proper representation of this Association at the American Bar meeting. I noticed by the constitution of the American Bar Association that three delegates, elected by this Association, are entitled to

admission, to sit and to participate in the proceedings of the association.

JUDGE WARREN—I move, Mr. President, that the Chair appoint a committee of three to confer with the members with a view of securing representation at the American Bar Association meeting.

A VOICE—Second the motion.

PRESIDENT HUGHES—You have heard the motion.

(The motion is duly put and carried.)

The Chair will announce the appointment of the committee after lunch. I do not want to make the appointment just at this time as I desire to find out who can spare the time and are willing to attend to the matter.

If there is no other business coming before the meeting, we will take an adjournment until 1:45, at which time I trust the members of the Association will be prompt in attending.

Secretary Garfield will be in the city this afternoon and I am informed that he is to be present at our meeting.

The meeting is now adjourned.

AFTERNOON SESSION

Thursday July 11th, 2:15 p. m.

JUDGE WHITSON—In the absence of the various Vice-Presidents of the Association, I have been asked, on account of my having at one time been President of the Bar Association, to present to you the President who will make his annual address. I have now the honor of introducing to you, Mr. Hughes, the President of the Washington State Bar Association. (Applause.)

(President Hughes here reads his address, followed by much applause.) See Appendix A.

PRESIDENT HUGHES—Members of the State Bar Association: It is an exceptional favor to have with us a trusted and tried member of the Cabinet of our great and beloved Chief Executive. (Applause). I think it is true that although other Secretaries of the Interior have visited the West, their trips have been of a cursory and necessarily more of pleasure than for the purpose of real information and enlightenment. Secretary Garfield comes, I believe, from the western reserve of Ohio; at least somewhere near enough to it to have the Western spirit in him. (Applause). In order to make effectual the work of his department, he has gone a little further west and taken away from us one of the very best men in our rank. I think that all of the members of this body who know Judge Bailinger, and most of you know him intimately, will be ready to say to Secretary Garfield that in the like of nearly twenty years of contact with him, it is their judgment that in all of this or any other country, no better, worthier, stauncher aid could have been found to assist him in the great work of his department.

That Secretary Garfield proposes to administer the forces of the Department of the Interior, in which we of the west are so deeply interested, in a broader and more enlightened, more advanced and better way than the forces of that department have ever been administered in the history of the government here—before, is illustrated, I think, by the fact that in this summer season he has come to this coast, not to visit us simply, not to enjoy our beautiful climate or our elegant scenery, but to spend days and weeks of his time in a most thorough and exhaustive investigation of things that are a part of this great western country. This country which is to be the empire of the future greatness and prosperity of this great nation. (Applause). My

friends, I take pleasure in introducing to you, Secretary Garfield, who has come to us, consenting to make for us simply an informal address. (Prolonged applause).

(Secretary Garfield addresses the Association.) See Appendix A.

PRESIDENT HUGHES—I want to extend thanks to Secretary Garfield and to explain that he has another appointment and must leave our meeting to make another speech. I desire to thank him on behalf of the Association, whose sentiments I know I express, for his remarks and his kindness in being with us.

The next paper on the program is "The Lawyer Under Fire," by the Honorable Hiram E. Hadley, Chief Justice of our state. (Applause).

(Judge Hadley reads paper.) See Appendix A.

An adjournment was here taken until 10 o'clock a. m., July 12th, 1907.

SECOND DAY

MORNING SESSION

Friday, July 12, 10 o'clock a. m.

PRESIDENT HUGHES—I believe Judge Burke's report is to be read this morning.

(Judge Burke's report is here read.)

The Washington State Bar Association assembled at Seattle, this 11th day of July, 1907, takes this early occasion to represent to the American Bar Association the desirability of its holding its annual meeting for the year 1909 at the City of Seattle.

The trip from the East to Puget Sound, even in mid-summer, will prove pleasant and attractive, affording for those who can spare the time, opportunities for side excursions of surpassing interest; as for example to Yellowstone Park, Lake Chelan, Snoqualmie Falls and other places of wonderful natural beauty. The Alaska-Yukon-Pacific Exposition, which will be held here during 1909, will in itself be well worth a trip across the continent to see.

The advantages of Seattle as a meeting place for the American Bar Association are many and obvious. The time of such meeting is in the summer, and our summer climate is almost an ideal one. Situated on the shores of Puget Sound the opportunities for excursions by boat up and down this beautiful body of water are attractive and unsurpassed. Transportation facilities by land and water, whether to near-by places or to Alaska, are ample and commodious.

Therefore be it *Resolved*, That the delegates to be chosen to attend the next meeting of the American Bar Association be authorized and directed to present this resolution to the Association and to use their best efforts to persuade that body to select Seattle as its meeting place for 1909.

PRESIDENT HUGHES—Gentlemen, you have heard the resolution proposed by the committee. What will you do with it?

A motion to adopt the resolution is regularly seconded, put and carried.

PRESIDENT HUGHES—I desire, for the information of the Association, to say that Vice-President Fairbanks has arrived in the city and is stopping, I believe at the Stander across the way, and to ask the members of the Reception Committee, such of them as may be here, to go at once, if they will, and meet Vice-President Fairbanks and advise him that we are in session and extend the courtesies of this Association to him, requesting him to be present at his convenience. I am told that there is an effort being made by the city to engage his time tomorrow morning. I wish you would impress upon him that we want a few minutes of his time tomorrow morning, as well as tomorrow night. It would be well to take with you a copy of the printed program and ask him to name what hour in the morning will suit his convenience and obtain his assent to appear before us at that time. We will arrange our business accordingly.

SECRETARY SHAFFER—He has already expressed his willingness to appear on Saturday.

PRESIDENT HUGHES—I address the members of the Committee on Reception. This reception committee is composed of the local bar members, whose guests the Association is, and I therefor suggest that this Association Committee is an appropriate committee and I ask that they at once visit Vice-President Fairbanks and report to us. Mr. Post's address will occur at an early moment and I hope you will be able to return before that time, because I don't want you to miss as good a thing as you will miss if you are not here then.

PRESIDENT HUGHES—The Committee on Grievances, Mr. Reeves, chairman.

MR. REEVES—I don't believe that committee has any report

to make. However, I will inquire among other members of the committee and ascertain whether they are here and look into the matter and see whether there is anything to report.

PRESIDENT HUGHES—We are always pleased when there is no prospect of any grievances.

PRESIDENT HUGHES—Are there any other matters to come up this morning, Mr. Secretary?

SECRETARY SILAFFER—I think that it might be well to see whether the Committee on Nominations are here. We usually, on the second day, elect our officers.

PRESIDENT HUGHES—The chairman of the Nominating Committee, R. G. Hudson, and the other members of the committee are Richard Saxe Jones, Wilbra Coleman, E. W. Bundy and Walter M. Harvey. It is necessary also, in making the nominations, to consider the place of holding the next meeting of the Association.

MR. HARVEY—Several of the committee are not here. I do not know whether you will supply their places or not. It is customary to report on the last day.

PRESIDENT HUGHES—It is important that we know whether they will be present or not. It is customary to fill the places on this committee—to have a full committee in presenting nominations.

MR. HARVEY—Several of them are not here. Two of us were here yesterday. I would like to ascertain if there are others here.

PRESIDENT HUGHES—Will you endeavor to ascertain what members of the committee will be here?

MR. HUMPHRIES—Mr. President, I would like to inquire what time has been set apart for discussion of the different papers that have been presented.

PRESIDENT HUGHES—I might say to Judge Humphries that it was my thought that the papers should be read first and the discussion be reserved until afterward, as the discussion would be probably more animated and interesting. At the conclusion of the reading of the papers, an opportunity will be given for the discussion of any paper, and we will conclude about how far it will be proper to permit such discussion to continue, before the time for adjournment.

I desire to suggest at this time that a reception is to be given at 2 o'clock this afternoon at the Library building in this city, which is just across the way on Fourth avenue, to Vice-President Fairbanks. It has been suggested that, in view of the fact that we are to be honored at this time by a visit from Vice-President Fairbanks, whose name appears upon our program, and who will be with us tomorrow morning and tomorrow evening at the banquet, that it is proper for the entire Association in a body to call upon him and pay its respects at that reception. I am going to suggest that when we adjourn, we adjourn to meet here at 5 or 10 minutes before 2 o'clock and make this the place of assembly, and go in a body and pay our respects to the vice-president, and return here and take up the exercise of the afternoon at half-past 2 o'clock. We can, therefore, hold the session, if the business requires, until 15 minutes past 12, or later.

Gentlemen, I now take please in introducing to you Mr. Frank T. Post, of the Spokane Bar, who will address us. His paper is upon the subject "Community Property Law." (Applause).

(Mr. Post reads paper.) See Appendix A.

JUDGE BURKE—Your committee appointed to wait upon Vice-President Fairbanks begs to report that they have waited upon the vice-president and he has informed your committee

that he will be here at 11 o'clock tomorrow and will make a brief address to the members of the Association. His time is so occupied that a formal address will be out of the question, but it will be a pleasure to him to meet the members of the Bar here tomorrow morning and to speak to them for a few minutes.

There is to be a general reception to the vice-president at the Library at 2 o'clock this afternoon and the members of the committee would like to suggest that it would be a very nice thing for the Association in a body to go over there for a few minutes.

PRESIDENT HUGHES—The Chairman has assumed the responsibility of announcing that when we adjourn it will be to meet informally and go in a body at 2 o'clock to pay our respects to the vice-president.

JUDGE BURKE—The vice-president has advised your committee that he would not be at liberty, because of the limitations on his time, to make anything of a lengthy address. It will be very brief.

PRESIDENT HUGHES—The next paper will be a paper on "Navigable Waters" by the Honorable W. H. Abel, whom I now have the pleasure of introducing.) (Applause).

(Mr. Abel reads paper.) See Appendix A.

MR. TREFETHEN—Before the members of the Association leave tonight, I desire to say that the excursion starts at 7:30 from Pier 1, and everybody is invited to go on the excursion. It is hoped that a large number will be there. The Alaska Steamship Company has put on an extra force of men and everything is in pleasant shape. The boat is brand-new and will make the trip round the Sound, and at half-past 9 or 10 o'clock will land at Luna park, where tickets will be given to all of the attractions in the park, so that they can be taken in without charge.

As to the banquet tickets: The local members who are still to obtain tickets I would like to kindly see me.

SECRETARY SHAFER—Mr. Mackintosh just requested me to say that he desires to meet the prosecuting attorneys here tomorrow morning at 10 o'clock, as they desire to hold their meeting at that time.

There is one other matter: There have been at least three persons spoken to me to ascertain whether if they were members of the bar of Alaska they were members of the bar of this state. We have not usually considered Alaska as a separate territory, but have felt that a member of the bar there would be a member of the bar here. I don't know whether I have been in the right or not.

PRESIDENT HUGHES—I suggest it is a proper subject for consideration at some suitable stage in our proceedings, whether we should extend to members of the bar of Alaska the privilege of being associate members of this Association. That might bring up a motion for the appointment of a committee to consider the question.

MR. ABBOTT—I am not going to discuss the paper by Mr. Post. But it is a matter of much importance to the members of the bar and I think it is entitled to great attention. It is my intention to make a motion that a committee of three be appointed, of which Mr. Post should be chairman, to consider this paper that he has presented to the Association, and to present to the Association at its next meeting a proposed bill for the consideration of the legislature, carrying into effect certain of the suggestions made by Mr. Post, and as ably presented in his paper; such bills to be presented to the Association by the three members of the committee appointed for that purpose.

PRESIDENT HUGHES—You have heard the motion. Is there a second?

A VOICE—I second the motion.

PRESIDENT HUGHES—Motion is moved and seconded. Are there any amendments?

MR. CUSHMAN—I desire to suggest an amendment. This is an important question and perhaps it would give an opportunity for more study and attention if copies of the proposed changes in the law were submitted to the members of the Association before the next Association meeting. I think it would enable us to discuss this question more thoroughly in all of its various features, than if it came before them for the first time at the meeting, thus putting it off for another year. I move the amendment, Mr. President.

A VOICE—I second the amendment. (The amendment is accepted.)

PRESIDENT HUGHES—The motion is that the Chair appoint a committee of three persons to prepare and submit at the next meeting of this Association the proposed amendments to the community property law of this state, and that, at a suitable time before the time for the meeting copies of the proposed law be submitted by mail to the members of the Association. Are there any other amendments?

(Motion is duly put and carried.)

PRESIDENT HUGHES—It is not necessary, after listening to the able paper, to suggest who should be members of that committee. I will appoint Frank T. Post of Spokane, chairman; Harold Preston of Seattle, in view of the fact that he was instrumental in bringing about some of the troubles of which Mr. Post has spoken, and as a third member I will appoint the Hon. T. L. Stiles of Tacoma.

The next subject for consideration will be the address given by Mr. Abel on "Navigable Waters." This subject is one of great interest and has been treated with admirable skill. Are there any members of the Association prepared to discuss any features of this paper?

MR. MCGIVRA—While I have appreciated very much the able paper read by Mr. Abel, in view of the fact that some of the statements he has made in that paper have a direct bearing upon a very important case now pending in the U. S. district court of this state, involving the same questions, I feel it my duty to at least point out one or two respects in which the particular statements are not accurate, in my judgment, as applied to the situation in the State of Washington, namely: The ownership by the State of Washington of the tide and shore lands. He urged, as a general proposition, that the government of the United States owned the title to the tide and shore lands and held them in trust for the future state. That, as a general proposition, may be true. Of course he had in mind those states which were carved out of a large area purchased by the United States from foreign countries. For instance, the United States acquired from Spain a large area, by purchase and treaty. In that treaty it was especially provided that the United States should, as soon as might be, carve that large area into states. The United States thus assumed the obligation of creating those states by reason of that clause being inserted in the treaty. It may also be true that, in those cases, the United States had another obligation in addition to creating those states. As the United States created those states by reason of the obligations, there may be some reason, or some foundation possibly, for the general statement that as the tide and shore lands in that area passed to the United States, the title was held in trust for the future states. But as to what is now the State of Washington, this is a different territory altogether. Oregon and Washington were not acquired by treaty, but was acquired by right of discovery. Consequently, the government of the United States has never been under any obligation to create a state of it. From the fact that it was originally the territory of Oregon, to say that you must apply that general

statement and say that the United States has held in trust the tide and shore lands of what is now the State of Washington for the future state, in view of the fact that it was under no obligation to create it, that it was holding the title in trust for something that might never exist, is drawing a conclusion with nothing to support it. There are other phases of the question that I might go into, but that is the one that I was particularly interested in, and I felt it my duty to challenge the accuracy of the general statement, in view of the litigation that is now pending.

PRESIDENT HUGHES—Members of the Association cannot be of the opinion that the conclusions reached apply to any particular case, and while we are much interested in the general subject, we will not care to discuss a lawsuit now pending for trial in our courts, before Judge Whitson, until he is ready to decide the case. (Applause). Is there any further discussion on the paper, not regarding the lawsuit.

MR. ROBERTS—I wish to say, Mr. President, that I have no desire or disposition to discuss the lawsuit now pending, but I do want to go on record in defense of the very able paper just presented by Mr. Abel. I naturally believe he is right, and I simply want to say, in answer to one question suggested by Mr. McGilvra, that if the members of the bar are interested in this question they will find the entire solution of the problem in the decision of the supreme court of the United States, in the case of *Schively v. Bolby*, which I will be happy to furnish. (Applause and laughter).

JUDGE PARKER—Mr. President, your committee upon "Judicial Administration and Remedial Procedure" beg to make a brief report.

To the Washington State Bar Association:

GENTLEMEN—We, your committee on Judicial Administration and

Remedial Procedure, beg to submit for your favorable consideration the following recommendations:

I.

We recommend that the law relating to notice of *Lis Pendens* be so amended as to apply to all actions affecting title to real property, including actions to recover possession thereof. Many of use had supposed such to be the law until the decision of *May vs. Sutherlin*, 41 Wash., 613, where it was held that sections 5515 and 5518 of *Balinger's Code* were not superseded or changed by the later general *Lis Pendens* law, being section 4887. So it now seems that in actions to recover possession of real property the final judgment relates back to the commencement of the action and a purchaser is bound to take notice of the action without there being filed in the auditor's office any notice of *Lis Pendens*. We are of the opinion that the purchaser should not be required to take notice of the pendency of *any* action involving title to, or possession of real property until notice thereof is filed in the auditor's office until the final judgment therein is recorded in the auditor's office, and we see no reason for making any distinction by reason of the nature of the action. However, we do not mean by this to suggest a change in the law relating to the lien of simple money judgments upon the property of judgment creditors.

II.

We recommend that the law be so amended as to enable the holder of a delinquent tax certificate to foreclose the same (if he so choose) by an ordinary civil action, in the same manner as the foreclosure of a mortgage or other similar liens and that upon such foreclosure the judgment and sale thereunder become final against all parties defendant, including minors and other incompetent persons. We see no reason why the holder of such a lien should not be permitted to foreclose in this manner and thus reap the benefit of a pure judicial proceeding in such form as to become *res judicata* against all parties properly made defendants.

III.

We recommend that the law relating to the settlement of statements of facts be so amended as to require the party proposing a statement of facts, when he serves it upon his opponent, to indicate either by a separate notice or in the body of such statement as to whether or not he proposed the same as a statement of "matters and proceedings occurring in the cause" or as a statement of "all of the material facts, matters and proceedings heretofore occurring in the cause and not already a part of the record therein." The attorney upon whom a statement is served is often unable to determine whether to object to the

same or not, by reason of being unable to determine upon the face of the statement as to which of these is proposed. It might be unobjectionable to him if proposed as the former, while it might be wholly deficient if proposed as the latter. No doubt many of us have found ourselves in this uncertain position.

EMMETT N. PARKER.

J. M. ASHTON.

T. L. STILES.

F. T. POST.

IV.

MINORITY REPORT.

It is settled that the appellant, in a case tried by the court without a jury, may appeal without taking up the evidence, raising the question of the sufficiency of Findings of Fact to support the judgment. It is also settled that the respondent may take up the evidence by way of statement of facts, having excepted to the Findings of Facts, and contend in the supreme court that the judgment is sustained by the evidence, whether sustained by the Findings of Fact or not. But, there is no provision of statute fixing the time within which the respondent may file and serve a statement of facts after advised by the procedure adopted by the appellant that the appellant will not himself cause a statement of facts to be certified.

Therefore the respondent will permit the statutory time to elapse at his peril. The statute should be so amended that when the appellant fails to file a statement of facts in bill of exceptions, that the respondent shall have the right within thirty days after being served with appellant's brief, to prepare, serve and file same.

V.

It is a matter of common belief that by reason of the unnecessary length of the record on appeal in law cases, that it is impossible for each judge of the supreme court to familiarize himself with the record by personal examination. As a matter of fact it seems to be admitted that seldom more than one judge of the supreme court ever reads the record, and it thereby follows that the decision of the court is based upon the conclusion reached by only one member thereof as to the facts. That the long records thus filed are absolutely unnecessary at the great majority of cases, is well known, and that some method should be, and can be devised to shorten the records and put the supreme court in a position where each member can become familiar with the record is manifest. If the statute made it necessary for the appellant to file with the clerk of the superior court, his assignment of error at the time he filed his bill of exceptions, or statement of facts.

and to confine the bill or statement to matters material to the various errors assigned and also to have the bill or statement when settled, printed, we would get the opinion of the majority of the supreme court as to that case, based upon actual personal knowledge of the record.

This committee has no pet provisions to suggest, as amendment to the present statute. We suggest that it is the manifest duty of this association to father much needed legislation relative to this subject. And we recommend that a special committee be appointed, instructed to prepare a bill with the object aforesaid in view, and report the same back to the next meeting of this association, to be then considered with the idea of recommending such a bill to the next legislature.

T. L. STILES.

F. T. POST.

MR. PARKER—Those are the five propositions we have to submit. The committee is unanimous for the first four, but on the latter we are not altogether agreed, but that will not prevent this body from discussing and taking action upon it.

On motion, report was received and placed on file.

PRESIDENT HUGHES—Is there any further discussion?

Remarks by John E. Humphries.

MR. JOHN E. HUMPHRIES, *Mr. President and Gentlemen of the State Bar Association:*

You have listened attentively to the address of the Honorable Hiram E. Hadley, Chief Justice of the Supreme Court of Washington, upon the subject of "The Lawyer Under Fire."

The honorable chief justice in his address has omitted to show you places where the lawyer of the State of Washington is under fire. By the statutes of Washington, Laws of 1903, page 68, under the title of "Barratry," it is made unlawful for any attorney or counselor at law to seek or obtain employment, to prosecute or defend in any suit or cause at law or in equity by means of personal solicitation of such employment, or by procuring another to solicit such employment for him. The penalty is a fine not exceeding \$500, to which may be added imprisonment in the county jail not exceeding three months, and in addition the attorney shall forfeit his right to practise in the state and his license shall be revoked, and he be disbarred forever after. Under the statute it will be impossible for the young attorney to secure any practice. In all other legal avocations of life the persons are permitted to solicit, to hustle, and to rustle for business, but an attorney-at-law cannot solicit, seek, rustle, or hustle for business.

My particular attention was called to this matter recently by an inquiry made of me in regard to a young attorney, who had used my name as a reference. I stated I believed he was an honorable gentleman and a growing young man in his profession. The inquirer stated to me that a certain attorney with whom the young man had office room had made uncomplimentary remarks in regard to the young lawyer. The old attorney with whom he officed had stated to the inquirer that the young man worked at other occupations than the law until he acquired some money and then would sit down at his desk and wait for the clients to appear with business and never solicited or tried to seek law business. I stated to the inquirer I was surprised that the young man must be condemned because he did not go out deliberately and try to get into the county jail for three months and be forever disbarred and forever disgraced. Under the statute he could not solicit or seek employment in legal cases and could not allow another to seek or solicit clientage for him; consequently it resulted in his finally quitting the law business, in which he had spent years of preparation, and getting a job as the driver of a laundry wagon to make a living. As long as the present statute remains in force there is absolutely no chance for the young man to build up a law practice unless he is wealthy or has influential corporation friends to bring him the business. Truly the lawyer is under fire.

MAGNA CHARTA.

In Proffat on Jury Trial, section 24, it is said:

"The common and popular opinion has been that trial by jury has been secured with other invaluable rights and privileges in that great bulwark of liberties—Magna Charta"; which was signed and sealed by King John at Runnymede on June 15, 1215.

The most important feature of Magna Charta was the protection of life, liberty, and property from arbitrary spoliation, and no freeman was to be imprisoned, seized of his freehold or liberties or free customs or otherwise damaged or otherwise passed upon but by a lawful judgment of his peers. This Magna Charta has been held up as the great bulwark of liberty and the principles were set forth in our Declaration of Independence of July 4, 1776, and one of the causes stated in the Declaration of Independence for separation from the mother country was this: "For depriving us in many cases of the benefit of trial by jury." The right of trial by jury in United States courts is secured by the seventh amendment to the constitution of the United States. *Baylis vs. The Travelers Insurance Company*, 113 U. S. 321.

Trial by jury in the states courts is secured by section 21, article 1. argument, thus:

"The right of trial by jury shall remain inviolate."

The constitution is carried into the statutes of the state, sections 610 and 611, P. W. C. 1905; 4996 and 4997, B. C. Under the constitution and the statute the right of trial by jury is made too plain for argument, thus:

"Sec. 610. All questions of law including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence are to be decided by the court, and all discussions of law addressed to it."

The power of the court under the constitution is defined by the statute, and is too plain for argument, as is shown by section 611, *supra*, thus:

"All questions of fact other than those mentioned in the section preceding shall be decided by the jury, and all evidence thereon addressed to them."

In addition to the above statutes, it is provided by section 4967, B. C., and section 359, P. C., thus:

"*An issue of fact*, in an action for the recovery of money only, or of specific real or personal property, shall be tried by a jury."

The constitution and the statutes are too plain for argument that all questions of fact shall be tried by jury. Yet, notwithstanding the plain statutes, we find the courts taking cases from juries and passing upon the questions of fact in direct violation of the constitution of the state and the statutes of the state.

It is provided in section 4994, B. C., and section 608, P. C., as follows:

"All cases tried in the superior court with a jury in which the legal sufficiency of the evidence shall be challenged, and the court shall decide as a matter of law what verdict should be found, the court shall thereupon discharge the jury from further consideration of the case, and direct judgment to be entered in accordance with its decision."

This last section is in direct conflict with the other sections of the statute, and so far as taking cases from the jury where there are questions of fact to be decided, is in direct violation of the constitution of the state. There is not a judge upon the bench in the State of Washington who is so obtuse and dense as not to know that such is the fact; yet, we find case after case taken from the jury, the jury discharged, and judgment rendered against the plaintiff.

It was sufficient in the days of our fathers to pledge each other their lives, their fortunes, and their sacred honor; yet almost every day in this beautiful land of ours the constitution of the state and the constitution of the United States are violated by some of the judges of the courts. They make the statement in their decisions that whenever

the facts are such that reasonable men would all agree the same way on the questions of fact that it is the duty of the court to take it from the jury and pass upon the facts. In a recent case before the supreme court of this state, *Jones vs. Moran Bros. Co.*, 88 Pac. 626, where a jury of twelve men "having the minds of reasonable men" and exercising their judgment found a verdict of \$8,000 in favor of the plaintiff, five of the judges of the supreme court "being men of reasonable minds" decided that the first twelve men were not men of reasonable minds and set aside the verdict. Here was a case where twelve men composed the jury decided on a way and the trial court, obeying the constitution and the statutes, left the issues of fact to the twelve jurors, but the supreme court with five of its justices absolutely decided the facts contrary to the decision of the twelve men.

This is only one case in many. The law, as you know, does not provide any other tribunal to decide whether the twelve men or the five men were men with or without reasonable minds. In the petition for rehearing filed in the case, this language was used, thus: "What perplexes us in this case is to have this court by five of its members 'having the minds of reasonable men' decide that twelve jurors who heard and weighed the evidence were not likewise men having the minds of reasonable men. We thought when we submitted the matter to the twelve jurors they were men 'having the minds of reasonable men'; at the first intimation we had they were not such was when this opinion was rendered, and if such really was the case, of course we can only regret that we ever submitted the case to such incompetent jurors."

In the case of *Thomas vs. Issaquah Shingle Company*, 86 Pac. Rep. 388, the court says:

"The issue of contributory negligence is for the jury where the minds of reasonable men may differ as to whether such negligence is proved."

This decision is in harmony with the constitution and the statutes of the state. The most remarkable thing we have had called to our attention is the fact that the supreme court of the state has never quoted but two of the statutes above set forth, and has never quoted section 611, *supra*.

Since the decision of *Jones vs. Moran Bros. Co.*, the supreme court of California in the case of *Doyle vs. Eschen*, 89 Pac. 836, on almost the same state of facts as the Moran case has decided that it was a question for the jury and founded the judgment rendered upon the verdict of the twelve jurors, who were "men of reasonable minds."

It is time that the lawyers of the state should rise up and enter their protest against the courts depriving their clients of trial by jury. The lawyer is under fire. He cannot advise his client what the law is.

He tells him that the question is tryable by jury. He quotes the statutes and the constitution, he secures the verdict of the jury, he gets the judgment of twelve reasonable men upon the facts of the case, and five or seven reasonable men immediately decide that his twelve jurors, who were selected as part of the court as triers of fact, did not have reasonable minds, and it is decided from the verdict and record without any evidence aside. No testimony is introduced to show that the twelve jurors were men having unreasonable minds, and the presumption of qualification is overruled and arbitrarily set aside. Might makes right. The property of one is arbitrarily taken from him and given to another, contrary to the constitution and the statutes. The attorneys are expected to lick the hand that smites them. They cannot abuse the court, they cannot complain; all they can do is to say to their clients is that the court has decided against them and they must pay the costs. The lawyer dare not solicit or seek business. When by accident he secures what he believes to be a righteous cause the trial court arbitrarily takes it from the jury and dismisses the case; or if it is submitted to a jury and he gets a verdict and judgment, it is appealed to the higher court and the higher court decides that his jurors were men without brains, without reasonable minds, and that the questions of fact which they have passed on would have been passed on the other way if the jurors had been men of reasonable minds, and they decide it so forcibly that the attorney cannot defend himself to his client, who has relied upon his judgment and advice.

The time is coming when the people will rule and when they will return to first principles and trial by jury will again be established in all its purity.

Trial by jury must remain inviolate, and as long as the constitution so provides, all questions of fact in common law actions must be submitted to a jury duly and lawfully impaneled, and the verdict of the impartial jury honestly rendered must be accepted as a decision upon the facts and must not be set aside unless for strong and cogent reasons. What a law-abiding people want and desire is that the laws made by the people shall be honestly and faithfully executed. When the constitution and statutes are honestly obeyed and faithfully kept, confidence will be restored, adverse comment upon the judges of courts will not be heard, and government of the people, by the people, and for the people, shall not perish from the earth.

I desire to introduce the following resolution:

Resolved, That it is the opinion of the State Bar Association that "The right of trial by jury shall remain inviolate," and that in common law actions 'All questions of fact other than those mentioned in the

preceding section, 610 Pierce's Washington Code, shall be decided by jury, and all evidence addressed to them,' and 'An issue of fact, in an action for the recovery of money only, or of specific real or personal property, shall be tried by jury,' unless the jury is waived.

It is our opinion that all judges of courts who do not obey the constitution and statutes of this state in regard to trial by jury should be defeated for re-election. We advise the voters of this state to use all honorable means to defeat in the next elections all such judges, "for depriving us in many cases of the benefit of trial by jury."

We believe the trial by jury is as much a necessity as a bulwark of liberty now as it was when the Declaration of Independence was written; or when

"Forest-born Demosthenes,

Whose thunder shook the Philip of the Seas,"

declared in the Virginia convention on March 23, 1775: "Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty, or give me death!"

Judge Hoyt moved to lay the resolution on the table. John E. Humphries said it was the first time he ever knew the Declaration of Independence, the constitution, and the statutes of the state, and the speech of Patrick Henry to be tabled in an American bar association; that instead of judges who violated the constitution and the statutes being defeated at the polls whenever they violated their oath of office they ought to be impeached immediately; and he could not understand why it was that the Bar Association was afraid to adopt the resolution, and——

PRESIDENT HUGHES—I do not want to deprive you of the instruction and pleasure to be derived from listening to Judge Humphries' discussion, but I want to call your attention to the limitation in the constitution of addresses of this sort. I hope all of you will observe the limitation and not overstep it so that the limited time at our disposal may be as evenly divided as possible.

JOHN E. HUMPHRIES—I didn't know there was a limitation.

PRESIDENT HUGHES—The constitution fixes it at ten minutes.

JOHN E. HUMPHRIES—I think the courts have set the precedent that we may disregard the constitution anyway. (Applause and laughter.)

PRESIDENT HUGHES—It might look that way as to some constitutions but not this particular one.

JOHN E. HUMPHRIES—This is the one we are concerned in, but that is true of all the other ones.

A VOICE—I second the resolution.

PRESIDENT HUGHES—You have heard the resolution. What will you do with it?

MR. HOWE—I don't think this is a proper time to discuss this question, and I move that the resolution be laid upon the table.

A VOICE—I second the motion to lay the resolution upon the table.

(Motion is duly put and carried unanimously, except John E. Humphries voted "no.")

PRESIDENT HUGHES—If there is no further business for the forenoon the meeting will stand adjourned.

AFTERNOON SESSION

2 o'clock p. m., Friday, July 12th.

PRESIDENT HUGHES—The meeting will come to order and we will now adjourn to the public library and pay our respects to Vice-President Fairbanks and Governor Mead.

(Meeting accordingly adjourned and members called on the officials in a body.)

2:30 p. m., July 12th.

(Association having returned to the U. S. court room.)

PRESIDENT HUGHES—Members of the Association please come to order.

Will Judge Ailshie kindly come and take his seat upon the platform? (Judge Ailshie comes forward.)

I wish to say to you that you will not be expected, unless you so desire, to appear in evening dress at the banquet, and members of the Association may appear in their usual clothes without dressing especially for that occasion. We sincerely hope that all visiting members may make it a point to remain and be with us at the banquet. Vice-President Fairbanks will respond to a toast, as well as other speakers, and we therefore expect to be able to entertain you pleasantly and we want you to be there. (President Hughes here requests that "no smoking" be the rule when the meeting is in session.)

MR. ROBERTS—I move that the privileges of this Association at this meeting be extended to any members of the bar from Alaska now in this city.

A VOICE—I second the motion.

(The motion is duly put and carried.)

MR. ROBERTS—I move that a committee of three be appointed for the purpose of ascertaining whether an amendment is necessary to extend to members of the Alaska bar the privileges of this Association. My only purpose at the outset was that the Alaska members might enjoy the privileges of this meeting.

The motion is duly put and carried.

PRESIDENT HUGHES—I will appoint on this committee, Mr. Roberts, chairman; Mr. Bell of Everett, and Judge Linn of Olympia.

I would like to ask Judge Jacobs of this city to sit with me

on the platform. Judge Jacobs is the Nestor of our bar whom we all honor and love. (Applause.)

(Judge Jacobs takes seat on the platform.)

The first paper this afternoon will be on the subject "Tidelands," which has been prepared by the Hon. H. G. Rowland of Tacoma, whom I now have the pleasure of introducing. (Applause.)

(Mr. Rowland reads paper.) See Appendix A.

PRESIDENT HUGHES—Does anyone desire to discuss the address which has just been delivered? Very interesting and important questions are presented in this address, fully and very ably.

If no one cares to be heard upon this paper I want to congratulate the members of this Association on their good fortune in having with us Judge Ailshie, as he insists his good Scotch ancestors pronounce the name, the Chief Justice of Idaho. Chief Justice Ailshie will entertain us with an address, "The Lawyer, the Conservative Influence in Our Government." I now have the pleasure of introducing to you Chief Justice James F. Ailshie, of the supreme court of Idaho.

(Judge Ailshie reads paper.) See Appendix A.

PRESIDENT HUGHES—We are indeed greatly indebted to the Chief Justice of Idaho for coming here and delivering before us such an able and interesting paper. We are indebted to him not only for that, but for the very excellent example he affords to the judicial officers of this state having the presence of the judiciary with us, and of their taking part in these meetings. I have no doubt it will be very helpful to this Association on all future occasions. I feel assured, after listening to this address, that it could not occur to the mind of any person here present, that the Chief Justice of Idaho ever failed to observe the law or the constitution of his own state. (Applause and

laughter.) He has advanced many facts which may be provocative of interesting discussion and I feel assured that no one will move his disbarment or impeachment.

JOHN E. HUMPHRIES—I am satisfied from the learned address of the Chief Justice that he never practiced law in Seattle.

Now our friend has talked about the lawyer. I have associated with him for more than 35 years and I know something of the lawyer of Seattle and other places. I believe he ought to make an open confession here today, and I want to see the lawyers here stand up who have never told a lie in their profession.

VOICES—Sit down, sit down.

Mr. Humphries sits down amid laughter.

PRESIDENT HUGHES—It is proper that I should say that I arise only as President of this Association, and that there is nothing significant in the fact of my arising occurring at the same precise moment that Judge Humphries sat down. (Laughter.) I want to say, in justice to the members of this Association and to any visitors who are here present, that I am assured by the significant looks telegraphed to me from the faces before me, that these members are all too modest to arise.

Is there any other discussion of this paper?

JUDGE WARREN—My rising has nothing to do with Judge Humphries' question. But I have had occasion to try cases in Idaho and many of the Idaho lawyers are trying cases in Washington. It would be a great pleasure to know from the learned Chief Justice of Idaho why they passed the law requiring the Washington lawyers or any outside lawyers to pay an admission fee before the lawyers from the State of Washington can come over there. Many lawyers from Idaho have practiced before me and with me and the courtesies of the bar are always extended, but if we go to Idaho it costs \$25.00 before

you can appear or have some Idaho lawyer appear for you. I don't think we ought to pay anything to practice there when the courtesies are extended to Idaho lawyers here. I would simply like to suggest to the Chief Justice that when this case comes up before him he should without much difficulty find it unconstitutional. (Applause.)

MR. STERN—There is one matter that was brought to my mind by the fact that we have both the Chief Justice of the State of Washington and the Chief Justice of the State of Idaho here at the same time, and the suggestion seems to me therefore timely, in this connection, that the supreme court of Washington might follow the practice of the supreme court of Idaho more closely in one matter of practice, and that is in the matter of granting rehearings as frequently as the supreme court of Idaho does, and then, after they have done that, to do what our supreme court rarely does and what the supreme court of Idaho frequently does, because it thinks it has a right to, and that is to reverse itself.

JUDGE MCCLINTOCK—I move you that this Bar Association tender to our nonresident brother, the Chief Justice of Idaho, the thanks of the Association for the very able and entertaining address he has delivered, and that this motion and the remarks be entered by the Secretary on the minutes of this meeting.

MR. MILLER—As a former practitioner in the State of Idaho, before the honorable court of which Judge Ailshie is now the Chief Justice, I desire to second the motion.

The motion is duly put and carried.

PRESIDENT HUGHES—I want to assure Judge Ailshie that he will not be called upon to answer any of the questions of the attorneys from Eastern Washington, which might be embarrassing; we will endeavor to take care of him so far as that is concerned. Neither need he indicate how he will rule on any question that may be presented to him.

I cannot refrain from suggesting, in view of the remarks that have been made, that it seems to me a serious misapprehension exists, in the minds of some people at least, with relation to the law against champerty and barratry. I don't think the law is aimed to prevent a lawyer from advising his neighbors and friends that he is a lawyer—provided he tells the truth. (Laughter.)

Is there any other discussion of this paper?

JUDGE AILSHIE—I want to thank you for the very kindly remarks that have been made and for the many unkindly things that have been left unsaid that you might have given expression to, and if I had known you were going to say so many nice things I should have taken my seat down with you.

I want to assure the gentlemen from Spokane that I think the difference in the granting of rehearing must be because the Washington court is a much better guesser than the Idaho court. But you know that you have seven members to do the guessing and we only have three—there are less of us to share the mistakes. Further than that, whenever you come over there and we get \$25.00 out of you, we will spend it all for law books. If you ever come down to Boise you will find a very good law library there that we have gathered in from those fees. (Applause.)

PRESIDENT HUGHES—If this is the end of the discussion on this subject, I want to call your attention to a matter which I think is deserving of consideration from the members here. A resolution has been passed inviting the members of the American Bar Association to hold its meeting in this city in 1909, during the month of August, which is the time chosen always for the association meeting. You are aware that at that time we will have in this city the Alaska-Yukon-Pacific exposition. I think you will recognize that we will offer to the lawyers of the

United States, both to the members of the American Bar Association and those who are not, one of the most pleasant and interesting places on this continent in which to hold the meeting of such association at that season of the year. The city of Los Angeles has for a couple of years been striving to have the meeting held in that city. That city alone had a membership in the American Bar Association of more than twenty at the time of the last meeting. I think there are less than ten members of the American Bar Association in the entire State of Washington. We are having a magnificent meeting of the State Bar and a splendid attendance with a very large increase in membership of our Association, and I want to suggest to the members of this Association that they signify, through the Secretary, their desire to become members of the American Bar Association, so that the delegates who are sent by this Association may convey their application and their names to the Secretary of the American Bar Association at its meeting in Portland in August. It costs but \$5.00 per year and for that you will get one of the reports annually. I do not know of anything of more worth, for in the association you will find many of the most eminent lawyers of our country. The expenditure is so slight, that even if you are not able to attend the meetings you will derive more than the equivalent of the cost. I hope many members of the Association will send their application to become members of the American Bar Association. I think by so doing we may stand a much better chance of this association holding its meeting here in 1909.

Are there any other committees who have not yet reported,
Mr. Secretary?

SECRETARY SHAFFER—None at this time.

PRESIDENT HUGHES—We will adjourn until 10 o'clock tomorrow morning.

THIRD DAY

MORNING SESSION

Saturday, July 13th, 1907, 10 a. m.

PRESIDENT HUGHES—Let the meeting come to order.

The Committee on Jurisprudence and Law Reform—are you ready to make your report? Carroll B. Graves is chairman of this committee.

MR. GRAVES—Mr. President, the members of your committee have not been fortunate enough to have a meeting. The chairman only arrived last night and we have not been able to hold a meeting as yet. I have talked with some of the members this morning and we desire to suggest to the Chair that we be permitted to file a written report with the Secretary and that it be published in the proceedings.

PRESIDENT HUGHES—If there is no objection, you will be permitted to prepare and file a report with the Secretary, which will be duly published.

The Committee on Legal Education and Admission to the Bar, John T. Condon, chairman.

MR. CONDON—I desire to make a very brief oral report to the Association if they desire to hear such report. At the last meeting we filed a report advocating two changes in the law, with reference to admittance to the bar. The two principal objects were that we change the requirements from a two years' study of law to three, and that a specific requirement be made of a preliminary or general education equivalent to a high school education. The effect of the statute being at present that prac-

tically no general education is required. Those points were argued at the last meeting. In that connection, being authorized by the Association, I went to the legislature to advocate the passage of a bill involving those two points. I was informed by the committee that there was no difficulty in getting such a bill through the Senate. I went to see Mr. Reid in the House and he told me that he didn't believe in such a bill; that he didn't believe that was necessary for the study of law. I was told that without Mr. Reid's assistance nothing could be done. I made three separate attempts to get his assistance, and failed to get it, and nothing was done. I told him I wasn't there advocating anything for myself or any institution that I was connected with, but that I went there on the recommendation of the Bar Association. It is certainly a shame the condition that the law of this state is in, with reference to a lack of requirements of anything like a general education. The examining committee doesn't feel like making requirements in view of the language of the present statute and if some move is not taken they won't be able to do anything with the next legislature. After talking with Judge Root, he has a suggestion that he desires to make that I'll ask him to present to the Association.

JUDGE ROOT—As stated by Mr. Condon, there was a discussion at the last session of this body and, I think, a well nigh unanimous sentiment in favor of some educational requirement outside of strictly legal matter. There was a diversity of opinion as to just what that should be, whether a college or an institution of that nature, or a certificate from some principal of a high school, or what the law should be. I think all of us believe that before a man should be admitted to the bar he should have something of a general education. The longer I continue in the practice of the profession, the more I am impressed with the correctness of that view. The members of the bar are, and ought to be, leaders in every community where they live. When-

ever there are any public questions up for discussion, any complication of public matters, the public intuitively turn toward the attorney for assistance and for counsel as they do to no other man in the world. We find our business men having their attorneys who are called upon to give them assistance in any difficulty or matter that becomes complicated, and it ought not to require an argument to show that the attorney should have more than a common, general education.

This question is all contained in a resolution which I have here, which leaves it to the examining committee. We had quite a discussion over the matter, but there was an extensive sentiment expressed that the whole matter should be left to the committee that examines applicant. I am inclined to think that this is the practical way of disposing of it. We have at the present time very able men of legal ability and good sense on that committee, who will properly exercise this information with the same degree of care that has been exercised in matters that have already come up for decision.

The resolution I desire to offer is as follows:

Be it Resolved: That it is the sense of this Association that the Board of Examiners for admission to the bar shall examine applicants not only as to their knowledge of the law but as to their general educational equipment, admitting only such as have attainments calculated to make an attorney useful to the community and creditable to the profession.

I move you, Mr. President, the adoption of this resolution.

JUDGE PARKER—I desire to second the motion for the adoption of the resolution. I believe that it is incumbent upon the State of Washington to see that these legal, that these educational requirements are added to the law.

JUDGE JOINER—I believe that we should do something to raise the standard of general ability among the profession by providing an adequate, general educational requirement. I am

heartily in favor of this resolution giving the power to the examining committee, and I think the next legislature should take some action along the lines suggested by the gentleman who precede Judge Root. I desire to second the motion.

PRESIDENT HUGHES—Are there are further remarks?

MR. CARROLL—In that connection I wish to say, sir, that the supreme court itself, of which our learned brother Root is a member, seems not to give that attention to the question of the admission of members to the bar or assume that responsibility which it seems to me the law and the duty of the court itself imposes upon it. The supreme court, it seems to me, should take it upon itself to ascertain by some examination in a general way, if nothing more, the qualifications of a candidate.

I am heartily in sympathy with the resolution and I hope, sir, that your action will bring about a higher standard in the legal profession.

MR. CUSHMAN—I want to say that I do not arise to a point of personal privilege in entering an objection and a protest against the course proposed. I listened to the president's address and Mr. Carroll's too, and the general impression I got from the many things that have been said is that "whatever is wrong; whatever we want we should not have; everything ought to be changed." Now I have known nearly all of the appointments our present state executive has made, and I think I have heard every one of them criticised more or less, except the one appointment, Judge Reid. I don't know how he got his education. I believe, and I say now, that the man who, by his own individual effort and ability, both physical and mental, or whatever it may be, that so controls himself and his own resources and his own abilities, no matter how he has to work to get his education—I say that a man who controls himself enough to read the law and study the law, is going to have self control

enough not to be a black sheep, if he should chance to exhibit such accomplishments as to pass the rigid examination which should be enforced by our courts under the present regulation. When we come to consider all of these characteristics of the ideal man, its a good deal like the fellow that was advertising for a man whom he wanted to pay \$10.00 a week. An applicant appeared and he told him what he wanted and what accomplishments the man who filled the place should have. The applicant said, "Oh yes, I know the fellow that you want; he died about 1900 years ago."

PRESIDENT HUGHES—I don't think there has been any statement as to how the education should be obtained, nor whether they should be admitted to practice, provided they studied or obtained the knowledge some way or other, Mr. Cushman.

MR. CONDON—In view of something that was said from which it might seem to be implied that in my statement of qualifications I referred to Mr. Reid or any other individual I desire to say that he is not only a leader of men but, however he got his education he has it now and it gives me pleasure to say that such qualifications are exceptional, and the case should not be set up as a standard by which every other man should be judged. He is a remarkable man with a remarkable mind and I am willing to accord to him all respect and honor. I have the highest regard for him, but it wouldn't do to use that standard by which to measure all others.

PRESIDENT HUGHES—Are you ready to vote on the adoption of the resolution?

Motion is duly put and carried.

————— I want to make a motion to direct the committee to report upon the matter of outside attorneys. Most of us are familiar with the Oregon Code in regard to the admission of other attorneys coming there from other states to practice

who have been admitted to the highest courts in other states. In Oregon they are saved a great deal of trouble which we have had in this state by not taking the license from another state as *prima facie* evidence that the applicant is qualified. They take him on probation for six months and then if he fails upon a proper investigation, and is not satisfactory, he is not admitted. And I move you, Mr. President, to request the committee on admission to report at the next meeting of this body upon the incorporation in our Code of the provisions of the Oregon Code in regard to the admission of attorneys coming from other states.

A VOICE—Second the motion.

(The motion is duly put and carried.)

PRESIDENT HUGHES—We will finish the reports later in order to accommodate ourselves to the next speaker. Dr. Elmer E. Heg, of this city, has kindly consented to read to us a paper on the subject, "Our Sanitary Laws." This is broadly a subject about which attorneys can not, perhaps, know too much. Dr. Heg is the executive officer of the State Board of Health of the State of Washington. He has done very much toward placing the subject of sanitation upon a proper plane in this state, but, because of a lack of appreciation of the importance of the subject and the co-operation of the members of the legislature, much less has been accomplished than ought to have been accomplished. We are merely at the beginning in this great field. I hope that, through the members of this association something may be accomplished in future legislatures on this subject, both in the State of Washington, by which we may place it on the same high plane as the State of Massachusetts. A bill framed with this thing in view was tabled apparently through a misapprehension of its importance at the last session of the legislature. It was one of the great mistakes, if not the greatest mistake, of that body.

I take pleasure in introducing to you Dr. Elmer E. Heg. (Applause.)

(Dr. Heg reads paper.) See Appendix A.

PRESIDENT HUGHES—After listening to this address, I believe all the members of our profession will appreciate the wisdom of the executive committee in asking Dr. Heg to read a paper before this association and in concurring with him in the selection of a subject. I will also say that probably no other man of that high profession was aware of the researches that were being made by the executive officers of the State Board of Health, nor had his wide knowledge and experience on this subject. He has obtained a well earned and honorary recognition at the hands of those who have made this subject a study, and not only those honors which he has already received, but in addition, he has been selected without an effort on the part of the people of Washington, and without any intervention on his own part or on the part of his many immediate professional friends and brothers, to be the one to represent their profession and their common country at the international conference to be held in Berlin, I believe in September of this year.

The time has arrived for the consideration of the report of our Obituary Committee, for expressing our tribute to the memory of our departed brothers.

(For obituary addresses see Appendix B.)

PRESIDENT HUGHES—We must consider ourselves exceedingly fortunate in having with us and in being able to have upon our program as one of the speakers at this meeting the Vice President of the United States. (Applause.)

It has not been my privilege to encounter Vice President Fairbanks at the bar, as it has been that of a number of lawyers here present. But we all know what his career was at the bar. That he has given it the best years of his life and that step by

step, by every industry and devotion to that noble profession he has climbed steadily to the top, until he was not only recognized as one of the foremost lawyers of his own state, but of the nation. And we know what kind of a man it takes and what it means to go through all the steps of such a career, and to remain as modest, as simple, as appreciative and as natural as has Vice President Fairbanks. We know that he would enjoy these exercises with us as fully as any member of this association has done, because of the lawyer in him which is evidenced through all of his attitude and manner. He has not only disclosed in his career what an American lawyer may accomplish in his profession but also what it is possible to do outside of his profession. He occupies the next most exalted office in the national government of our country, and he bids fair to occupy the executive chair of the nation.

This is not the first visit he has made to Puget Sound or to the State of Washington and this northwestern country. He has studied natural resources and interests of this northwestern portion of the United States and of Alaska as well, and is probably better informed as to the resources and conditions and possibilities of these two great regions than any other man in public life outside of the Northwest.

I take pleasure now in introducing to you our Vice President, Mr. Fairbanks. (Prolonged applause.)

ADDRESS OF VICE-PRESIDENT FAIRBANKS.

VICE PRESIDENT FAIRBANKS: *Mr. President and Members of the Washington Bar:* I count myself most fortunate in being able to share with you, even for a brief time, the pleasures of your annual meeting. I have not come for a very extended or formal speech. I am here under a written contract which gives me the liberty to speak as little or as much as I desire, the latter being determined by your patience. In view of the rather numerous demands upon me, I suggested to my good friend who invited me to meet with you, that I would come upon a condition that I could meet you informally, without any set speech, face to face as lawyers.

I have established, I hope, Mr. President, the existence of a contract which entitles me to a decree of specific performance.

PRESIDENT HUGHES—The decree is granted. (Applause)

VICE PRESIDENT FAIRBANKS—I cannot forbear saying a word more than I had intended when I entered this chamber. But your greeting is so cordial that it would seem to be the part of ungenerosity not to respond with more than a word of greeting and farewell.

As I looked over this body of lawyers I was struck by the fact that probably every state in the Union was represented here, and I was struck with the impression or the idea that this is a composite of the entire bars of America. There is a good Providence in all of our developments as I believe, and that is this, Mr. President, that the bar of the new state which make for the glory and splendor of the Republic, have always been and are today the strongest men the bar has produced. You do not need to go to the old centers for men of ability. You do not need to go to the old cities for members of the bar who will measure swords with the strongest men in our profession anywhere. It is a most fortunate thing that in the formative state of the law of a new commonwealth that there should be men of commanding ability to advise the court and to aid in establishing a jurisdiction in a new state.

I see here many men I have known in the profession and many men I know—some of whom I knew at college when they were providing their legal counterement for the future fight. I am touched by their presence, for it carries me back to an earlier day when we were struggling for a foothold in the world. We studied the law because we were enamored of the legal profession, and I am gratified to see that my friends have won a place in the hearts and confidences of the men of the Washington bar.

The bar is a great profession. I think no testimony need be produced upon that subject, Mr. President. I think we would all be willing to confess judgment. We would admit the fact, for, while it is a truism, we delight to recall it. For ten and a half years I have been out of touch with the profession, but up to that time I was actively engaged in it from the time of my entrance to the bar. And I say to you that which is the truth, that in all my experience the brightest and sweetest days were those days that were spent at the bar. The contest there was sharp. The give and take sometimes tried us to the utmost; feeling runs high when we are charged with the responsibility of upholding the cause of our client. Words in the heat of debate escape our lips which we would recall, and which in our calmer moments we do recall. And one of the glories of this great profession is

that true, knightly honor among the members of the bar. (Applause)

There is something provident in it all it seems to me, for out of the smoke and dust of a sharp legal contest at the conclusion, comes a sweeter and more endearing friendship than comes out of any other professional relation in this world. (Applause)

I have heard now and then a criticism of the bar, and now and then the criticism was justified. That is because no organization composed of men is absolutely perfect. But I state it upon my conviction as a man, that among the lawyers of the American bar is to be found, man for man, more honor and integrity, more inflexible honor than in any other body. (Applause)

The lawyer I believe, Mr. President, is great, not only in his genius, not only in his capacity as a pleader, not only in his ability in a searching cross-examiner developing the truth, not only in his mastering forensic power, but his greatest, I believe, in his inflexible integrity of purpose. (Applause)

It is a rare thing for a member of the American bar to prove false to the trust he holds. The qualities which make the best lawyer are the qualities which make the highest and best type of American citizenship. The qualities which make the best members of the bar, are the qualities which make the best men in public affairs, both of the state and nation alike. For a lawyer, when he takes a brief for the people, takes it with the same integrity of purpose that he takes a brief for a client. I have never seen a lawyer who was a lawyer in the highest sense of the term, who ever proved recreant to the high trust committed to him by his countrymen.

But, Mr. President, I did not come to make a speech, but I cannot close without thanking my friend over yonder for his tribute to an old Indiana friend—Thad Huston. He was in Indiana the promise of the man that you knew at the bar in Washington, the promise of the judge upon the bench. You thought at the beginning some doubted his proficiency as a presiding judge. I can well understand that. However, knowing the bent of his mind and the magnificence of his heart, I could not have doubted, nor could those who knew him in his early days, that upon the bench he would have proven an ideal presiding judge. A man of sound heart, of honest purpose, such a man must be an ideal presiding judge. For if he possessed the legal lore of a Mansfield or a John Marshall, the greatest American judge, he will fail in the execution of his high office if he have not the sound heart and the high ideals in law. And Thad Huston was a man whose integrity of purpose was an unvarying as the faithfulness of the north star to itself. (Applause)

My friends, I wish to return to you my profound and grateful appreciation of your generous greeting. None has given me more sincere gratification than this. I thank you. (Prolonged applause.)

PRESIDENT HUGHES—The Vice-President will be compelled on account of other engagements, to retire at this time. We will be able to conclude in the next thirty minutes and I hope that all will remain.

PRESIDENT HUGHES—We will now have the report of the Committee on Judiciary.

(Mr. Shank reads report.)

To the Washington State Bar Association:

We, the members of the Judiciary Committee, beg leave to report as follows:

It has been the custom of the Judiciary Committee on former occasions to investigate and report such recommendations, as to the practice in our courts, as in its judgment would aid in facilitating the transaction of business, and likewise to recommend such changes in our laws as bear more particularly upon the question of practice.

It has seemed to your committee that on the whole the practice of this state is fairly satisfactory, and now that the practice has become settled and known to the profession generally that it is best to encourage as little interference with its present established form as is possible to meet new and changing conditions. We have therefore contented ourselves in bringing to this Association the results of some investigation regarding the work of our courts, in quality and quantity.

We have at the present time in this state, thirty-two superior judges. Of this number, four were added by the last legislature. The increase in superior judges of this state was made necessary by the phenomenal growth of the state and the increase of commercial activity which has come upon us during the last two years. The overcrowded condition of the supreme court calendar has been the subject of general comment for some years, and as is well known, was relieved only by the permanent increase in the number of judges of the supreme court. This increase in number, however, has not been in proportion to the increase in business. An examination of the records of the supreme court of this state for the last five years discloses the astonishing fact that for this period of time the supreme court of this state exceeds in the number of opinions written any other supreme court or court of last resort in any state in the Union, in proportion to the number of judges engaged. The records for the year 1906 show that

568 cases were appealed, together with 29 original applications being filed with the supreme court, thus making a grand total of 598 cases in a single year. We feel that the supreme court of this state is to be highly congratulated upon the high character of the work performed. Investigation of the attention paid by the leading legal periodicals, such as the Central Law Journal, American Law Review, etc., to the decisions of the courts of the different states discloses the fact that our appellate court does not take second rank with any court in the country. The citation of its decisions is widespread and general. We must not forget as members of the profession, the excellent quality of the work and the range of investigation which the court's decisions comprehend.

The standard and character of the work performed by the superior courts, we believe, is of an increasing high order. Out of the 568 cases appealed for the year 1906, but 161 reversals occurred. Allowing for the 20 dismissals, shows that our appellate court affirmed 386 cases during that year.

We make this report, feeling that these facts should come before us, that we may ever maintain a just pride in the character of the decisions of our appellate court, not forgetting that if at any time the character of the court's decisions is not of the high order of which we can now boast, that this change must reflect more or less upon the work of the bar which practices before that court.

We believe that it would be of the highest order of usefulness if the judiciary generally would make it a point to attend the State Bar Associations, and would therefore recommend that before the convening of another session of this Association that the Secretary address each of the judges of the superior and supreme courts, urging upon them the special request of this Association that they give us the pleasure of their presence in our meeting.

Respectfully submitted,

CORWIN S. SHANK, *Chairman.*

JOHN P. HAETMAN.

EDWARD BRADY.

The motion to adopt the report is regularly put and carried.

PRESIDENT HUGHES—Is the special committee to make nomination of delegates to the American Bar Association ready to report?

MR. DOVELL—I desire to say that we have been able to ob-

tain an expression from the Honorable Frank T. Post of Spokane and Honorable Thomas B. Hardin of Seattle and they are willing to attend the convention. The committee would propose Mr. Post and Mr. Hardin as two of the delegates and that third delegate or vacancies in the delegation to the national association be left to the president.

A VOICE—I move that the report be accepted and that the Secretary be instructed to cast the ballot of the association for these members.

(Motion duly put and carried.)

PRESIDENT HUGHES—Are the nominating committee ready to report?

MR. HUDSON—Before reading the formal report I wish to make some explanation. The next place naturally in order for holding the meeting of the association next year is Tacoma, but but some suggestion was made to the committee that Spokane be selected as the next place, as we had an invitation from Spokane to go there. The reason of this was that in 1909 the exposition would be here in Seattle and it would be well to have the meeting that year in Tacoma, on the west side. It would swell the attendance and perhaps we would have the National Bar Association here at that time so that it would be more desirable to have the meeting on the Sound. Therefore, your committee has named Spokane as the place for the next meeting, and nominate the following officers:

REPORT OF COMMITTEE ON NOMINATIONS.

A. G. AVERY, President	Spokane
R. S. HOLT, First Vice President	Tacoma
C. C. GOSE, Second Vice President	Walla Walla
J. B. BRIDGES, Third Vice President	Aberdeen
JEREMIAH NETERER, Fourth Vice President	Bellingham
C. WILL SHAFFER, Secretary	Olympia
W. V. TANNER, Assistant Secretary	Seattle
N. S. PORTER, Treasurer	Olympia

We suggest that hereafter the Association select its places of meet-

ing and elect its officers and not observe the custom heretofore followed of succession in office.

R. G. HUDSON,
RICHARD SAXE JONES,
WILBRA COLEMAN,
E. W. BUNDY,
WALTER M. HARVEY,
Committee.

MR. SHANK—I move the adoption of the report and that the chairman be instructed to cast a ballot of the association for the members so nominated.

The motion is duly put and carried.

JUDGE LINN—Mr. President, your special committee on membership of outside attorneys desires to make its report.

REPORT OF SPECIAL COMMITTEE ON ADMISSION TO
MEMBERSHIP.

Your Committee recommends that section 3 of the constitution be amended to read as follows:

All reputable members of the bar of the State of Washington, who shall have been duly elected to membership, and shall sign this constitution, may become members of this Association by paying the sum prescribed as admission fee; and any attorney not residing in this state who is a member in good standing of the bar of any state or territory may be elected to associate membership, and shall, upon signing the constitution, be entitled to all the privileges of members except to vote upon questions before the Association.

JOHN W. ROBERTS,
O. V. LINN.

Report was adopted.

PRESIDENT HUGHES—At Everett last year a motion was made to amend the by-laws to read in substance like this: Any member of the bar in the State of Washington, in either the state or federal courts, in good standing, shall be entitled to membership by paying the initiation fee, which includes the dues for the current year. I think later it was provided that the applicant should be recommended by two members.

I think the changing of the by-laws of the Association should be done more formally than was done at that time. There ex-

isted a special reason for trying to increase the interest and to promote the growth of this association. The meeting which is now about to conclude demonstrates that it means something to be a member of the State Bar Association of this state. It should mean as much as we can make it mean. It cannot be made to mean enough, if members can be admitted to this association with so little formality as would be established by its action of a year ago. I am not criticising that action nor the power given the committee. There was a reason and a very good one. But it seems to me that from this time on it should be such an honor to be a member of the bar of this state and to become a member of the State Bar Association that an applicant for such a membership would recognize that he must possess all the requisite qualifications. He should understand that he would be considered carefully and formally, both as to his good name, his character and reputation at the bar and from all other standpoints bearing upon the matter, that these matters would be considered by the committee appointed by the association and by the association itself. And I want to report for this committee the advisability of again amending our by-laws so that it will provide that the members of this association may present, and induce them to present the names of their fellows for membership in this association, with a recommendation of at least two lawyers of their acquaintance, to be submitted to the Bar Association itself, or to the executive committee, for their election or rejection to membership in this association. I think it will be conducive to making it a greater honor in the future to join this association, if such restrictions exist. We should aim to demonstrate that this association is one of the most conservative and strongest forces of the state.

MR. DOVELL—I think I have a suggestion to make that may meet with the approval of the association. The constitution has been amended in such a manner that it is hard to tell what it

is. I move that our executive committee, or some other committee, be instructed to present a new constitution at the next meeting—constitution and by-laws—and I also move that the amendment made at the last meeting be suspended until the next meeting.

A VOICE—Second the motion.

Motion duly put and carried.

A resolution is here read by Mr. Condon, which was duly put and carried:

WHEREAS, Through the courtesy of the Alaska Steamship Company, this Association last evening enjoyed a delightful ride upon the waters of Puget Sound on board said Company's splendidly appointed steamship *Chippewa*;

Now, therefore, be it resolved that this Association extend to the Alaska Steamship Company its appreciation of said Company's generosity; and,

That the Secretary be instructed to send a copy of this resolution to the said Company.

MR. STERN—We very properly passed a resolution of thanks to Chief Justice Ailshie, I now move you that we extend the thanks of this association and its members, to Secretary Garfield and Vice President Fairbanks for the addresses made by them before this association, and that a copy of such resolution of thanks be forwarded to them.

Motion duly put and carried.

MR. HOLT—In this connection it is fitting that some expression be given on behalf of this meeting to the beautiful and growing city of Seattle and to her bar. I move you that the thanks of this meeting be extended to the members of the Seattle bar for their very hospitable and enjoyable entertainment on this occasion.

Motion was duly put by mover and carried.

PRESIDENT HUGHES—Is there any further business before the association?

MR. BURKE—I move you that we adjourn.

Motion duly put and carried. Meeting adjourned.

APPENDIXES

President's Address

By E. C. HUGHES.

Gentlemen of the Washington State Bar Association:

Another year has gone swiftly by, and again this association is convened in its annual meeting. This year has been one of unusual growth and prosperity to our State; and in both our profession has fitly shared. Attracted by the exceptional advantages here afforded, our ranks have been increased by the acquisition of many new members, coming from every portion of the common country. We have the right to assume, from the courage and spirit which has prompted their migration, that they represent the best in the professional life which they have left behind them, and that they bring to our ranks a new leaven; and so believing, we bid them welcome, and extend to them the hand of fellowship.

But while many have thus joined our number, others, whose memories we cherish, are gone from us forever, taken away by the grim and relentless hand of death. To their memory suitable testimonials will be presented in the report of the appropriate committee.

It is well to be reminded on occasions such as these that the members of our profession are officers of the law, sworn to support the constitution of the nation and the laws of the State. The public have a right to look to our profession, not only to aid in the enactment of wise, just and humane laws, but to assist in securing a proper interpretation and enforcement of them. With the progress of civilization and enlightenment, it is not only our privilege, but our duty, to be in the vanguard. Growth and progress create new conditions, new conditions call forth new demands, and these in turn beget the need of new laws. While ours is a conservative body of men, we should, nevertheless, be a progressive one. We are carried forward by the tide of events. We cannot wait while public opinion forms. We must help to form it. We cannot pause till the voice of anarchy or the hand of the mob have wrought disorder and violence. We must see that the power and dignity of government are maintained, and the majesty of the law is upheld. Nor can we sit idly by, or lend our assistance for a fee, while organized greed and power trample upon private rights

or disregard public health, safety, comfort and happiness. The duty is ours to interpret and invoke existing law, or if that be insufficient to assist in the preparation and enactment of new laws. We are, or should be, not from mere sentiment, but from solemn duty and sacred obligation, the champions of right, the foes of wrong, whether public or private. From the foundation of free government in this country, the leaders of our profession have framed the bills of rights and built the constitutions, declaring the privileges of the citizen and the fundamental laws by which he shall be governed. They have founded commonwealths, framed their laws, organized the courts and actively participated in every function of government; and in all this, I am fain to believe they have been moved, for the most part at least, by a patriotic and just conception of public and private duty. Indeed, it is an inspiration to call in review the long list of names of those who have thus honored their country and glorified their profession; such, for example, as Samuel Adams, James Otis, Patrick Henry, Hamilton, Madison, Pickney, Ellsworth, Marshall, Story, Webster, Lincoln, the Fields and Miller. And notwithstanding the occasional note of popular cynicism, which the listener may hear, the lawyers of today have maintained the traditions of their profession, and will uphold its dignity and honor. That we may do so the better it is well that we should meet thus annually to assist each other in casting out the unworthy, to promote the ethical relations of our profession, to discuss the more absorbing topics of legal interest, and to better prepare ourselves for the discharge of professional obligations and duties.

The constitution of this association makes it the duty of the president to deliver an address at each annual meeting of the association. The scope of that address is not attempted to be defined, but in the constitutions of other like associations, it is commonly provided that the annual address of the president shall review and discuss the important legislation which has been enacted in the interim between its meetings, the more important and far-reaching decisions of the courts, and those grave questions of public interest that are exciting the attention of the people, and demand the attention and thought of the lawyer. Believing this course to be a wise one, and calculated to excite greater interest in these meetings, I have determined to submit in this address, for your consideration, a brief review of such of these as have appeared to me to be of greatest interest and importance. Within the limits of such an address, this review must necessarily be brief and imperfect.

Members of the bar are not only trained in those general principles

of law which define, regulate and control the rights and duties of men in their relations to each other and to the general public, but should also be versed in the express or statute laws of the nation and commonwealth. Since the last annual meeting a session of our Legislature has been held, and many new laws enacted. It may be remarked in passing that the recent Legislature has not neglected its opportunity to create new commissions and public boards. Time would not permit a review of these enactments, nor would the subject be one of general interest. It may, however, be observed that this tendency to create new boards, commissions and other offices so pronounced in the legislatures of all the states, is one which must early receive the attention of our profession, and of thoughtful and conservative men generally. Some of these laws are required, and others proper, but the tendency toward paternalism and toward the increase of public burdens is one that demands the sober reflection of thinking, conservative people.

Among the laws of this class, I desire, however, to mention, with commendation, chapter 12 of the last Session Laws, which provides for the creation of a State Board of Finance, consisting of the Governor, State Treasurer and State Auditor. One of the principal objects of this act is the better preservation of the permanent educational funds of the State. It is made the duty of this board to invest these funds in the securities authorized under the constitution; but it is expressly provided that they shall not be invested in special assessment or district bonds, or those not found to be within the limit of indebtedness prescribed by the law and issued as general indebtedness bonds. It is wisely provided in the act that school district bonds shall be given preference in the investment of these funds. The public schools and the higher institutions of learning in this State have been richly endowed by the liberality of Congress, and the careful preservation of these permanent funds, as contemplated by the constitution, is one of the most sacred and important duties of the State.

Alaska-Yukon-Pacific Exposition.

A subject which early received the attention of the last Legislature was the Alaska-Yukon-Pacific Exposition. It is gratifying to note with what unanimity the people of the state have endorsed this exposition, and to observe the readiness with which the Legislature responded to this endorsement. The total amount of the appropriation made for this purpose was \$1,000,000, of which \$400,000 is appropriated for the purposes of making an exhibit of the resources, products and advantages of the State of Washington, and the erection of State buildings therefor. The sum of \$600,000 was appropriated for the purpose of

erecting buildings for the University of Washington. This sum is required to be expended under the supervision of the Board of Regents of the university. The act provides that the use of these buildings shall be permitted to the exposition. As a portion of the buildings to be erected, out of the funds of the exposition company and the general appropriation of \$400,000 made by the State, are required to be of a permanent character, it will be seen that a full equivalent of the \$1,000,000 appropriated by the Legislature will be returned to the State through these improvements upon the university grounds, which will be of lasting and permanent value, not only to the university, but through it to the State as a whole. The manner of raising these funds is somewhat unique in the history of legislative appropriations.

Chapter 3 of the Session Laws provides for the establishment of harbor lines, and for the survey, platting and appraisal of shore lands of the first class along Lakes Washington and Union, within what is now the corporate limits of the city of Seattle. When these lands shall have been appraised, they are to be sold, subject to payment in three installments and the entire proceeds of the sales paid to the State Treasurer are to constitute the Alaska-Yukon-Pacific Exposition fund. Thus, without any actual burden to any other portion of the State, the entire funds to be expended, amounting to nearly \$2,000,000, including the capital stock of the company, will be raised within the City of Seattle.

Chapter 172 of these laws permits counties to levy an assessment for the purpose of making county exhibits at this exposition.

Our state is young, its natural resources are in large part undeveloped, its climate is unsurpassed, its natural beauties without a parallel elsewhere in the United States. Beyond us, to the north, lies the great undeveloped Territory of Alaska, with her minerals, her fisheries and her timber resources, awaiting the hand of industry and toil. By this exposition, it is confidently believed that these great natural resources and advantages will be made known to the world and the development and growth of Alaska and our own State be advanced many years.

Among the acts deserving of mention is that providing for the punishment of parents or persons responsible for the delinquency of children. In the enforcement of truancy laws, and the laws providing for the control and punishment of incorrigible children, much difficulty has been encountered owing to the indifference and neglect of parents and guardians. The theory of the act is that penalties should be imposed where legal and moral responsibility attaches. I have no doubt this law will greatly assist in protecting the young from

vice, and in preventing the growth and development of a criminal class.

Railroads.

Among the more important acts relating to the subject of railroads, two only will be here mentioned. Chapter 20 is an act regulating the hours of service of employes in the train service of railroads, and making it unlawful for any common carrier to require or permit any servant to remain on duty with the movement of any train for more than sixteen consecutive hours, except when, by casualties occurring after the trip has been started, or by accident or unavoidable delay of trains scheduled to make connections, he is prevented from reaching his terminus.

Chapter 142 is an act providing for the furnishing of cars to shippers, and contains many provisions of importance to railroad companies and to the business public. Rebating and discrimination are prohibited by the act. Full power and authority is given to the railroad commissioners to enforce the provisions of the act, either upon or without complaint made. They are authorized to prescribe and enforce such additional rules, regulations and orders as may be necessary, and to modify or suspend the same in order to compel the railroad companies in this State to promptly receive and forward all lawful freight, and make prompt delivery thereof to the consignee. They may require railroad companies doing business in this State to provide and supply cars and other railroad equipment sufficient to transport, with reasonable dispatch, all lawful freight properly tendered to them for shipment, and may proceed against such companies for failure to comply with such requirements. Every such failure or refusal subjects the company to a penalty of not less than \$100 nor more than \$5,000, to be found by the jury in any action to be brought therefor; but upon proof of public calamity, accident or unprecedented increase of business no conviction shall be found.

Public Highways.

Chapter 149 creates a Public Highway Board and the officers of the State Highway Commissioner, and prescribes the duties of such officers. Chapter 150 is an elaborate and carefully prepared law, providing for the improvement of public highways in the different counties, and authorizes payment of the cost thereof, in part, out of the public highway fund of the State. Under these laws, it is hoped that there may be a wise and intelligent expenditure of the public funds in providing suitable permanent highways for the convenience of all the people. No public improvement is of greater importance or conduces more to the happiness, comfort and prosperity of a commun-

ity than good roads, particularly in a State like this; and nothing will more speedily bring about its permanent development and settlement.

Banking.

For several sessions of the Legislature, efforts have been made to secure the enactment of a complete banking act which would provide for the formation of banking corporations, and regulate the business of banking within the State, and also provide for the appointment of a State bank examiner. Such an act was passed at the last session of the Legislature and is found in chapter 225 of the published laws. It is a carefully prepared law, covering all the important phases of the business of banking, and was wisely enacted at a time of general prosperity.

Elections.

During the last campaign the two principal political parties declared in their platform in favor of a primary election law. These declarations were made in obedience to a popular demand for purity of the ballot. After much labor and struggle, such a law was enacted by the recent Legislature, and may be found in chapter 209. It would perhaps be unfair to apply to this effort the words of Horace, "*parturiunt montes; ridiculus mus.*" However, just foundation may be said to exist for the fear that all will not be realized from this act that has been anticipated by its advocates. In its general features, except for certain innovations and changes, it follows substantially the provisions of the primary election laws which have been adopted in other states.

It provides that all candidates for elective offices in this State, either state, county, municipal, precinct of congressional, shall be nominated at a direct primary election held in pursuance of this act. Although the office of United States Senator is not an elective office within the meaning of this act, it is provided in section 7 that the declarations of candidacy for that office shall be filed the same as in the case of other congressional and state officers. Provision is also made for placing the name of candidates for the office of United States Senator upon the ballot, so that the elector may be afforded an opportunity of expressing his preference for that office.

Section 28 makes it unlawful for any person, in order to aid or promote his nomination to a public office, under the provisions of this act, to give, expend or contribute, or to promise to give or expend any money or other valuable thing except for "personal expenses."

Section 29 makes it unlawful for the publisher of any newspaper or periodical published in this State to receive or to agree to receive

any money, gratuity or other valuable consideration for the support or advocacy of the election or defeat of any candidate or candidates at a primary election, except that such articles may be published when they are conspicuously marked at the head thereof with the statement: "Paid Advertisement."

In view of the foregoing provisions, it will at once occur to the lawyers here assembled that it is extremely doubtful whether the penal provisions of this law can have any reference to a candidate for the office of United States Senator. The corrupt use of money to secure this high office has done more to create a demand for the enactment of such laws than all the other causes combined. Permit me here to quote from the very able address of the first president of this association, delivered in this city in 1894. Speaking of men of great wealth who secure their advancement to the high office of United States Senator by the corrupt use of money, he said:

"He is the very personification of the corrupting power of wealth. He exemplifies in his person the sad degradation of our highest deliberative body and the demoralized condition of the public mind. It is the duty of every patriot to denounce and resist him, and scourge him away from the legislative hall, which he dishonors. The Senate chamber should have over its portals this inscription:

"'Let such, and such only, tread this sacred floor
Who dare to love their country and the poor.'"

Pure Food.

Another very important law passed by the recent Legislature is chapter 211, which provides against the adulteration of food, drinks and drugs, and fraud in the sale thereof, and creates a State Board of Food Commissioners. It is unfortunate that such a law should be necessary, and yet such is the power of avarice and selfishness in this commercial age that it becomes necessary in order to properly protect people against the dangers which flow from the use of adulterated foods, drinks and drugs. So widespread has this evil become that even our federal Congress has been compelled to enact legislation upon the subject. It is to be hoped that the provisions of this law will be found adequate to correct the evils against which it is directed. Yet I cannot refrain from expressing the opinion that the penalty it imposes might properly be made more severe.

The Torrens Law.

After many unsuccessful attempts before former Legislatures, the friends of the Torrens law have at last succeeded in securing its enactment. The provisions of this law, and the objects and purposes to be accomplished by it, have been so often discussed and considered at

these meetings, and are so well understood by the members of the bar and the law itself is so elaborate, that I must forbear discussion of its provisions. Some of them would seem to warrant criticism and may call for future amendments. In view of the expense and delay incident to invoking the provisions of this law, it is probable that many years will elapse before land titles are generally registered. If in the past lawyers have ever permitted themselves to be influenced in opposition to this law by the thought that it might curtail their professional income, a careful examination of its provisions will, I think, disabuse that fear. To my mind it is, indeed, a regrettable feature that under the practical working of this law it will become necessary, in obedience to its provisions, to invoke the power of the courts and the services of a lawyer so frequently.

The Criminal Insane.

It has long been a favorite defense with lawyers, in defending criminals accused of the graver crimes, to interpose the plea of insanity. Several noted trials have occurred in this State within the past two years in which this plea was interposed. In a proper case this plea is right, and its benefits should not be withheld from the unfortunate criminal whose mental condition renders him irresponsible for the crime he has committed. At the same time, such a plea should not be permitted to be so interposed as to enable the guilty person, who is legally responsible for his crime, to escape appropriate punishment therefor. To provide just protection for the irresponsible and at the same time to safeguard the public, a necessity existed for the enactment of a law relating to the criminal insane, and to their trial, commitment and custody. Such a law, which admirably meets the necessities of the case, was framed by Senator Graves and enacted by the last Legislature of this State.

Other important laws were enacted by the recent Legislature, but those to which reference has been made will serve to indicate the trend of public opinion, and the general course of recent legislation in other states as well, upon the more important questions of general public interest.

Public Service Law.

Among the laws passed by the legislatures of other states during the past year, perhaps none excited so much public attention and interest as the "Public Service Law" of the State of New York. It is doubtless the most advanced step hitherto taken by the legislative body of any state of our Union in the regulation and control of public service corporations and the protection and preservation of public comfort, health and safety. The law was enacted in the face of organized and powerful

opposition and is a tribute to the unique statesmanship, undaunted courage, the breadth of view and the humanitarian impulses of the man who not only occupies the executive chair of the State of New York, but engages the attention and interest of the entire nation. The time may not be ripe for the adoption of such a law in every state of the Union. Many of the states, like our own, are perhaps too new for machinery so cumbersome, or expense so great as are entailed by this law. But the principle of governmental control of the corporations and other agencies, whether public or private, which furnish or supply the general public utilities, conveniences and necessities may now be regarded as a fixed principle in our system of government. There will be no backward step. That it may not be abused, however, it should be guided and directed by men trained in the law and restrained by the thoughtful conservatism and impartial judgment which have always characterized those who have attained the greatest eminence in our profession.

A brief review of the provisions of this law will, no doubt, be of interest to the lawyers here present. A careful examination of the law as a whole is recommended to those who have taken any special interest in this subject. It may also serve as a model to those who are ambitious to serve in future legislative bodies, since it has been prepared with unusual care and skill.

For the purpose of avoiding any misconstruction of the meanings of the various terms used in the act, each of these terms has been carefully defined. By this act the State of New York is divided into two districts for each of which a commission is created, one consisting of the counties of New York, Kings, Queens and Richmond, including the Borough of Manhattan, and the other embracing all the other counties of the State. Each of these commissions consists of five members, who are appointed by the Governor of the State, by and with the advice and consent of the Senate. One of their number is designated by the Governor to act as chairman for each of the commissions. The Governor is likewise invested with power to remove any commissioner for inefficiency, neglect of duty, or misconduct in office; but he can only do so after giving him a copy of the charges preferred against him and an opportunity to be publicly heard. The commission is given jurisdiction over all corporations engaged in business as common carriers in the State of New York, including railroads and street railroads, and also over those corporations, whether private or municipal, engaged in the manufacture, sale or distribution of gas and electricity for light, heat and power. Each commission is also authorized to ap-

point a general counsel. The law also provides for a secretary to each commission, whose duties are carefully defined.

For the purpose of affording an efficient public service and speedy redress for any wrongs, it is also provided by the act that each commission shall have a place of business in its district, at which the office shall be open from eight o'clock in the morning until eleven o'clock at night every day in the year. These commissions are also authorized to hold meetings at any time or place within their district, and an investigation may be had by any one of the commissioners. It is the duty of the counsel to represent the people of the State of New York and the commission in all actions and proceedings involving any question under this act, or under any act or order of the commission in regard to all matters relating to their powers and duties.

It will no doubt be a matter of much interest to many persons here present to note the amount of salaries paid to the different officers designated under this act. The annual salary fixed for each commissioner is \$15,000. The annual salary of the general counsel to the commission is \$10,000, and the annual salary of the secretary to the commission is \$6,000. The commission is invested with authority to fix the salaries and compensation of all officers, clerks and other employees, and the members of the commission and all officers and employees thereof are allowed their actual and necessary traveling and other expenses and disbursements.

Each commission must make an annual report to the Legislature, which report must contain a full record of all the orders and other proceedings of the commission. Power is also given to issue subpoenas and to compel the attendance of witnesses and the production of books and papers. At all hearings the commissioners are governed by rules adopted and prescribed by them. An interesting innovation is found in the following provision: "In all investigations, enquiries or hearings the commission or a commissioner shall not be bound by the technical rules of evidence." At these hearings it is also provided that no person shall be excused from testifying, or producing any books or papers, before the commission when ordered so to do by the commission upon the ground that such testimony, evidence, books or documents may tend to incriminate him or to subject him to penalty or forfeiture. In all actions and proceedings instituted under the act or in pursuance to any order of the commission, precedence is given in the courts of the State over all other civil actions, except election causes.

Article II. of the act relates to common carriers, and is similar to the provisions usually embodied in acts creating railroad commissions, except as it includes street railroads and other common carriers. It

will not, therefore, be necessary to review in detail the provisions of this article. A few of the more important provisions only will be noted.

It is therein provided that such common carrier shall furnish such service and facilities as shall be safe and adequate in all respects, and that all charges therefor shall be just and reasonable and not more than allowed by law or by order of the commission. Railroad corporations, upon the application of any shipper, are required to provide switch and sidetrack connections, and if they fail to do so, the commission, upon a hearing, has power to order that it be done.

Every common carrier is required to file with the commission a tariff schedule and to keep the same open to public inspection. These schedules are required to plainly state the places between which property and passengers will be carried. No change is allowed to be made in these schedules except after thirty days' notice to the commission, and an affirmative order therefor by it. To make these provisions effectual no common carrier is allowed to engage or participate in the transportation of passengers, freight or property, between points within the State, until after it shall have filed its schedule as provided by the act. And it is prohibited from charging any different rate than that specified in its schedule.

All unjust discrimination by special rate, rebate, drawback or other device is especially prohibited, as are also all unreasonable preferences and advantages between persons, corporations and localities.

Common carriers are permitted to issue passes to their officers, employees, agents, surgeons, physicians, attorneys-at-law and their families. They are also permitted to issue passes to ministers and to officers or employees of Young Men's Christian Associations, hospitals, charitable and eleemosynary institutions, and persons engaged exclusively in charitable work. They are permitted also to carry free the employees of sleeping car companies, doing business along their line, railway of sleeping car companies, express companies, telegraph and telephone companies, doing business along their line, railway mail service employees, postoffice inspectors and other government officials, newsboys on trains, baggage agents, witnesses attending any legal investigation or proceeding in which a common carrier is interested and persons injured in accident or wreck, as well as physicians and nurses attending such persons. And the act expressly provides that common carriers may carry passengers or property free with the object of providing relief in cases of general epidemic, pestilence or other calamitous visitation. With these and other like exceptions, passes are prohibited by the act.

False billing by carrier or shipper is also expressly prohibited. Every common carrier is required to afford reasonable and equal facilities for the interchange of passenger, freight and property traffic between lines owned by them and connecting lines. There is also a provision in the act that no common carrier shall charge or receive any greater compensation in the aggregate for the transportation of passengers or property, under substantially similar circumstances, for a shorter than for a longer distance over the same line in the same direction.

Apropos of the want which has been much felt in the State of Washington during the last year, there is this provision in the law: "Every railroad corporation and street railway corporation shall have sufficient cars and motive power to meet all requirements for the transportation of passengers and property which may reasonably be anticipated, unless relieved therefrom by order of the commission."

And it is provided that if in a given contingency any such corporation shall not have all the cars required, all cars available to it for such purposes shall be distributed among the several applicants therefor without discrimination between different localities or competitive points, except that preference may be given for supply of cars for shipments of live stock or perishable property.

Every common carrier may be required to issue a bill of lading, and it is forbidden to insert any clause in such bill of lading exempting it from any liability for loss, damage or injury caused by it to freight or property from the time of its delivery for transportation until the same shall have been received at the point of its destination, and a reasonable time has elapsed after notice to the consignee of its arrival.

Article III. of the act relates to the powers of the commission in respect to railroads, street railroads and other common carriers. These powers are briefly defined as follows: Each commission shall have general supervision of all common carriers within its jurisdiction, and shall have power to examine the same and keep informed as to their general condition, their capitalization, their franchise and the manner in which their properties are conducted and managed, not only with respect to the adequacy, the security and accommodation afforded by their service, but also with respect to their compliance with all provisions of law, all orders of the commission, and all their charter requirements. Each commissioner has power to examine all books, documents and papers, and by subpoenas duces tecum to compel production thereof.

It is their duty to prescribe the form of the annual reports required

under the act to be made by common carriers; and they may also require such corporations to file monthly reports of earnings and expenses; for failure to make which reports, a forfeiture is imposed of \$100 for each and every day that such corporation continues in default.

It is made the duty of the commission to investigate the cause of all accidents on any railroad or street railroad which result in loss of life or injury to persons or property, and which, in its judgment, require investigation. Every common carrier is required to give immediate notice to the commission of every accident happening upon any line of railroad or street railroad owned and operated by it, but it is provided that such notice shall not be admitted as evidence or used against such common carrier in any action or proceeding.

The commission, upon its own motion, may investigate as to any act or thing done or omitted by the common carrier; and it must make such enquiry in regard to any act or thing done or omitted which is in violation of any provision of law or of any order of the commission. Complaints in writing may be made to the commission by any person or corporation aggrieved, setting forth any act or thing done or omitted by such common carrier, or claimed to be in violation of any provision of law or the terms and conditions of its franchise or charter or of any order of the commission. Upon the presentation of such complaint, a copy thereof must be served upon the common carrier, and unless the matter complained of be remedied, a hearing is had by the commission, whose duty it is to investigate such charges. Whenever, after a hearing upon complaints, the commission shall determine that any fares or charges demanded or exacted by the common carrier, or that any regulations or practices of such common carrier affecting such rates are unjust, unreasonable, discriminatory or preferential, or in any wise in violation of the law, the commission shall determine the just and reasonable rate, fares and charges to be made thereafter as the maximum charge; and such order of the commission must thenceforth be observed. Whenever, upon such hearing, the commission shall be of the opinion that the regulations, practices, equipment, appliances or service of any common carrier, in respect to the transportation of persons, freight or property within the State, are unjust, unreasonable, unsafe, improper or inadequate the commission shall determine the just, reasonable, safe, adequate and proper regulations, practices, etc., thereafter to be enforced, and shall fix and prescribe the same by order to be served upon such common carrier, which must henceforth be bound thereby.

The commission is given power to order repairs in tracks, motive power and other facilities, and to make an order directing any rail-

and operation of street railroad corporation to increase the number of cars or to increase its motive power, or to fix the time of starting or running of cars, or to change the schedule for the running of cars, or to make any other suitable order that the commission may deem to be reasonably necessary to accommodate the public.

It may also establish a uniform system of accounts to be used by such common carriers, and may prescribe the manner in which such accounts shall be kept. These accounts are subject to the supervision of the commission. As a reasonable safeguard to the common carrier it is provided that any employee or agent of the commission who discloses any fact or information which may come to his knowledge in the course of any such inspection or examination, except so far as may be required by the commission, or by a court or a judge, shall be guilty of a misdemeanor.

Section 114. No railroad or street railroad corporation shall begin the construction of a railroad or street railroad, or of any extension thereof, which would be a source of public convenience and necessity from which the commission would be given power to grant the permission and approval, whenever it shall after the hearing, determine that such construction, in such exercise of the franchise or privilege, is necessary to and for the public service. No franchise, or right to construct, or to own or operate a railroad or street railroad, shall be assigned, transferred or leased without the approval of the commission.

Section 115. No railroad or street railroad corporation shall sell, convey, transfer, purchase or acquire, take or hold any interest in the stock of any railroad or street railroad corporation, or any other corporation organized under the laws of the State of New York, except as authorized to do by the commission.

Section 116. No railroad or street corporation of any description shall own or hold more than a railroad or street railroad corporation shall own or hold more than ten per cent of the capital stock of any railroad or street railroad corporation or of any other corporation organized for the purpose of collateral security, and not otherwise authorized by the commission. This provision of the law shall not apply to any corporation which is a subsidiary of the corporation in which it is owned or held. It is provided that the commission may, in its discretion, authorize the transfer of any stock by or through any corporation or individual in violation of this act, if it shall be shown that such transfer is necessary for the acquisition of property.

Section 117. No railroad or street corporation shall own or hold more than ten per cent of the capital stock of any railroad or street railroad corporation or of any other corporation organized for the purpose of collateral security, and not otherwise authorized by the commission.

erty, the construction, completion, extension or improvement of its facilities, or for the discharge or lawful refunding of its obligations, may be authorized by the commission, but such obligations are not legal and valid unless so authorized. For the purpose of enabling it to determine whether it shall issue an order granting such permission, the commission is authorized to institute an investigation and hold such hearing and examine such witnesses, books, papers, etc., as it may deem of importance in enabling it to reach a proper determination. The commission, however, has no power to authorize the capitalization of any franchise of the right to own, operate or enjoy any franchise whatsoever in excess of the amount actually paid to the state or municipality therefor.

It is made the duty of every common carrier to observe and obey every order made by the commission so long as the same shall remain in force.

For every violation of any provision of the act or a failure to comply with any order of the commission a common carrier is subject to forfeiture in a sum not exceeding \$5,000. It is also provided that every officer and agent of any common carrier who shall violate the law or any order of the commission shall be guilty of a misdemeanor. The penalties imposed upon corporations subject to the provisions of the act, other than common carriers, is not to exceed \$1,000 for each offence. And it is likewise made a misdemeanor for every person, either individually or acting as agent or officer of a corporation other than a common carrier, to violate any provision of the act or any order of the commission.

ARTICLE IV of the act relates to gas and electrical corporations. The commission is given power to investigate and ascertain from time to time the quality of gas supplied by persons, corporations and municipalities in manufacturing and supplying gas or electricity for light, heat or power, and in transmitting the same, and to order such improvements as will best promote the public interest, preserve the public health and protect those using gas or electricity and those employed in the manufacture and distribution thereof, or in the maintenance and operation of the works in connection therewith.

The commission has power to fix the standard of illuminating power and purity of gas manufactured and sold by such corporation or person and to prescribe methods of regulation of the electric supply system. In order to intelligently exercise these powers, they are authorized to examine and investigate the methods in manufacturing, delivering and supplying gas, and may have access to make such examinations and investigations to all parts of the manufacturing plant owned or used,

whether by private or municipal corporations. For the protection of persons and corporations engaged in the manufacture and sale of gas and electricity, all employes and agents of the commission are prohibited from divulging any information obtained by them in the course of their duties.

It will be noticed that the powers given to the commission extend to municipal corporations, and there can be no reason why they should not. It is surely for the best interests of the public that municipalities, when engaged in the manufacture and sale of gas or electricity for public use, should be subject to the same rules and requirements as those which govern private individuals or corporations engaged in the same business. The object of these laws is the protection of the public.

The commission is likewise given power, in its discretion, to prescribe uniform methods of keeping accounts for such corporations, to examine all persons, corporations or municipalities under its supervision, and keep informed as to the methods employed by them in the transaction of their business, and see that their property is maintained and operated for the convenience and accommodation of the public and in compliance with the requirements of the law and of their franchises and charter. They must also require all such persons and corporations to make an annual report, verified by oath, showing the amount of authorized capital stock, the amount of authorized bonded indebtedness, the receipts and expenditures during the year, the amount paid as dividends upon the stock, the amount paid as salary to each officer, etc., etc. And like reports are required to be made by municipalities under the provisions of the act.

They have power to enter upon and inspect property, buildings, factories, plants, power houses and offices of any corporation, person, or municipality engaged in the business of supplying gas or electricity. They have also the power to examine the books and papers of any such corporations, or persons, and to compel the production of papers pertaining to the affairs being investigated by it.

It is made the duty of the commission to appoint inspectors, whose duty it is to inspect, examine, prove and ascertain the accuracy of any and all gas and electric meters. No corporations are permitted to use any meters which have not been inspected. Whenever a consumer to whom a meter has been furnished requests the commission in writing to inspect such meter, it is their duty to cause it to be inspected and tested, and if not found up to the standard required, they may order the same to be forthwith removed, and a correct meter placed in its stead, the expense to be borne by the corporation.

Before any gas or electrical corporation is permitted to exercise the

right or privilege of any franchise therefor it must first obtain the permission and approval of the commission. And no municipality may build, maintain or operate, for other than municipal purposes, any works or system for the manufacture of gas or electricity for lighting purposes without a certificate of authority granted by the commission.

A separate section of the act substantially re-enacts the provision as to over-capitalization and excessive indebtedness heretofore mentioned with reference to railroad and street railroad corporations, and applies it to gas and electrical corporations. Such corporations are not permitted to transfer or lease their franchises or their works without the written consent of the commission; and they are likewise prohibited from acquiring the stock or bonds of other like corporations unless authorized so to do by the commission.

Upon complaint of the mayor or other proper officers of a village, city or town, or upon the complaint of a stated number of customers, either as to the illuminating power, purity, pressure or price of gas, or the regulation of the voltage of the supply system used for lighting, or the price of electricity sold or delivered in such municipality, it becomes the duty of the commission to investigate as to the cause of such complaint. In making such investigation, the commission may cause the examination and inspection of the works, plants and methods used by the person or corporation complained of, and may cause an examination to be made of its books and papers pertaining to the manufacture, sale, transmission or supply of gas or electricity. Notice of such hearing is required to be given to the person or corporation complained of and an opportunity afforded to be heard in respect to the matters therein mentioned. After hearing and investigation, the commission may by order fix the maximum price of gas or electricity to be charged by such corporation, and may order such improvement in the manufacture, transmission or supply of gas or electricity, or in the methods employed by such persons or corporations as will in its judgment improve the service. The price so fixed by the commission shall be the maximum price to be charged for gas or electricity in such municipality until the commission shall, upon complaint or upon another investigation conducted by it, again fix the maximum price.

Two-Cent Fare Bills.

In several of the states acts have been passed during the last year regulating the rates of transportation by railroads. These acts have been commonly known as the two-cent-fare bills, and their passage has been due in large measure to a popular conviction that railroads, where unrestrained by law, have been exacting exorbitant tariffs. These enactments, for the most part, have been the result of agitation and not

of investigation and reflection. That such laws, when reasonable, are within the constitutional powers of legislatures, cannot be denied; but that they are not within the proper scope of the legislative function when made without reference to the fairness or reasonableness of the tariff imposed and without competent and intelligent investigation of the subject, or when made to apply unequally and without reference to the actual cost of the service performed, is equally clear.

Such a law was passed by the legislature of New York at its recent session, but the governor of that state, fearless of political consequences, and with a breadth of view and a conception of justice which does credit to his ability, both as a lawyer and an executive officer, returned it with his veto. His reasons will commend themselves to the intelligent judgment of every fair-minded citizen. These laws, like all similar laws, should be remedial in their character; they should attempt to impose exact and equal justice upon all who may be affected by them, whether directly or indirectly; and they should be enacted only after such investigation and with such knowledge of the evil to be redressed, or the result to be obtained, that they may be so framed as to accomplish their legitimate purpose.

Congressional Laws.

The last session of congress being the short session, few acts of public importance were passed. Among these may be enumerated the act prohibiting corporations from making money contributions in connection with political campaigns; the act authorizing the secretary of commerce and labor to investigate and report upon the conditions of woman and child workers in the United States; the act to regulate the immigration of aliens into the United States; and the act to promote the safety of employes and travelers upon railroads by limiting the hours of service of the employes thereof. The latter act is similar in its provisions to the act upon the same subject passed by the last legislature of this state. If upheld by the federal tribunals its provisions must be sustained by the power of congress, under section 8 of article I of the constitution, to regulate commerce with foreign nations and among the several states.

Judicial Decisions.

A number of decisions have been rendered by the supreme court of this state during the past year to which it would be interesting to advert, if time permitted.

Among the questions presented to the courts for determination since the last meeting of this Association, which are of the most far-reaching importance in their relation to the public welfare, and, at the same time, of the greatest interest to the members of our profession.

are those which have arisen upon the act of the first session of the last congress, relating to the liability of common carriers engaged in interstate commerce. So far as concerns common carriers by land, the act presents certain features which are entirely new in congressional legislation. If sustained by the supreme court of the United States, where the question of its constitutionality is now pending for decision, its influence will doubtless be of far-reaching importance upon the industrial conditions and welfare of the nation.

The act provides "that every common carrier engaged in trade or commerce * * * between the several states * * * or with foreign nations * * * shall be liable to any of its employes, or, in the case of his death, to his personal representative for the benefit of his widow and children, etc., * * * for all damages which may result from the negligence of any of its officers, agent or employes, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, ways or works."

It also provides that in all actions to recover such damages the fact that the employe may have been guilty of contributory negligence shall not bar a recovery, where his negligence was slight and that of the employer gross in comparison. All questions of negligence are for the jury, who may diminish damages in proportion to the negligence attributable to the employe.

It is also provided that no contract of employment, etc., shall constitute any bar or defense to any action brought to recover such damages, and the right of action is limited to one year after the cause accrues.

This law has been declared unconstitutional by Judge Evans, of the western district of Kentucky, in the case of *Brooks vs. Southern Pacific Ry. Co.*, 148 Fed. 986, and by Judge McCall, of the western district of Tennessee, in the case of *Howard vs. Illinois Central Railway Co.*, 148 Fed. 997. Each of these judges holds the act void, not only because not within the power of congress under the interstate commerce clause of the constitution, but because, if its subject matter may be deemed a regulation of commerce at all, its provisions are alike applicable to all commerce, intra-state as well as interstate.

A contrary view has been taken by several of the other circuit courts of the United States. In *Malloy vs. Northern Pacific Railway Co.*, 151 Fed. 1019, the act was applied by Judge Hanford without discussion of the constitutional question involved. But these questions were considered by him, and the constitutionality of the law upheld, in an able opinion rendered on the motion for a new trial in the case of *Plummer vs. Northern Pacific Railway Co.*, 152 Fed. 286. In the same

... in law - which in case and exhaustive opinion ... in the case of *Kelly* ... when the law is in all respects ... by John Speer, of the southern ... review of the authorities, ... Feb. 605, and also ... in the case of *Spa* ... and persuasive opinion which ... The latter decisions were all ... and evidently without any refer

... to forecast what will ... the basis of the supreme court of ... by counsel for commerce ... must be admitted, with much force ... the commerce clause of the federal con ... because congress has no power ... finds sanction in the terms ... of the constitution, declares ... to regulate commerce with ... among the several states." Chief Justice Marshall ... Wheat. 4, adopting in this respect ... that our constitution was "one of

... the meaning which the framers of the constitution ... the word "commerce," we must take into considera ... which existed at the time and which led to ... among the original states, and between them and ... had become sadly demoralized. It was regulated by ... with a view to their own interests. The several states ... their efforts were impotent to overcome this depressed ... of their commerce. This fact was one of the ... which prompted the organization of a central govern ... the formation and adoption of the federal constitution ... be assumed that the framers of the constitution ... congress with the most ample power to regulate ... with foreign nations and among the several states in all its ... Chief Justice Marshall declared, in *Brow* ... Wheat. 444: "To construe the power so as to impair ... would tend to defeat an object, in the attainment of which ... the American public took and justly took, that strong interest which ... from a full conviction of its necessity." And again he declared.

in *Martin vs. Hunter*, 1 Wheat. 304: "The constitution unavoidably deals in general language. It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specification of its powers or to declare the means by which those powers should be carried into execution." In defining the meaning of the word, in the case of *Gibbons vs. Ogden*, he said: "Commerce, undoubtedly, is traffic, but it is something more; it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse." In a concurring opinion in the same case, Mr. Justice Johnson said: "The subject, the vehicle, the agent, and the various operations become the objects of commercial regulation."

It is contended, however, that the act does not purport to prescribe any rules for the regulation of commerce, but that in its first section it merely creates a liability on the part of common carriers to their employes in case of injury, and to the representatives of the latter in case of death, when caused by the negligence of the carrier. Laws will not be declared unconstitutional, however, except where there is a manifest want of power in congress to enact them, or except where the act in question is manifestly in violation of the express provisions of the constitution. Every intendment must be indulged in their favor. It is apparent, I think, that congress intended, in enacting this law, without attempting a specific definition of their duties, to declare that common carriers engaged in interstate commerce should be governed by the well-established rules of the common law defining the care which must be employed by such carriers for the safety of life and protection of property, and that, to secure the better enforcement of these rules, such carriers should be liable to their employes in case of negligence. It would have been quite impracticable for congress to specifically define the rules by which carriers shall be governed under all conditions and in respect to all the agencies necessarily employed by them; and it would be wholly unnecessary to prescribe general rules, since these rules are now clearly defined, perfectly understood, and readily applied to every condition which may arise. It is important, however, to secure the better enforcement of these rules; and it may readily be assumed that this will be accomplished by declaring and defining the liability of such carriers to their employes in the case of infraction of the well-defined rules of care and duty. And why may this not be appropriately declared to be a regulation of commerce, since commerce embraces not merely traffic, but transportation; and not transportation alone, but all the vehicles, instrumentalities and agencies by which it

is carried on? It was declared by Mr. Justice Matthews, in *Smith v. Alabama*, 124 U. S. 465, that it would be competent for congress to prescribe the qualifications of locomotive engineers for employment on carriers engaged in interstate commerce. And it is said in *Hopkins v. United States*, 171 U. S. 578, that the power to regulate commerce "embraces all the instruments by which such commerce may be conducted."

To prescribe the liability of such carrier to its employe for its neglect to exercise the care required by law would therefore seem to be an appropriate exercise of the power of congress to regulate commerce. Upon this proposition the language of Mr. Justice Field, in *Railway vs. Alabama*, 128 U. S. 99, which was a case involving the question whether a similar state statute was unconstitutional because an invasion by the state of the power vested in congress by the commerce clause of the federal constitution, may be read with interest. In the course of his opinion, he says: "It is conceded that the power of congress to regulate interstate commerce is plenary; that, as incident to it, congress may legislate as to the qualifications, duties and liabilities of employes and others on railway trains engaged in that commerce, and that such legislation will supersede any state action on the subject. But until such legislation is had, it is clearly within the competency of the states to provide against accidents on trains whilst within their limits."

In *Sherlock vs. Alling*, 93 U. S. 103, the court, by the same great justice, thus declares the law: "It is true that the commercial power conferred by the constitution is one without limitation. It authorizes legislation with respect to all the subjects of foreign and interstate commerce, the persons engaged in it and the instruments by which it is carried on. * * * The power to prescribe these and similar regulations necessarily involves the right to declare the liability which shall follow their infraction. Whatever, therefore, congress determines either as to a regulation or the liability for its infringement, is exclusive of state authority."

The case of *Johnson vs. Southern Pacific Ry Co.*, 196 U. S. 1, arose under the "Safety Appliance Act" of March 2, 1893. In the opinion in this case the constitutionality of that law under the commerce clause was not questioned, and the court declared that "The primary object of the act was to promote the public welfare by securing the safety of employes and travelers."

In view of these, and other like declarations of the supreme court it would seem reasonably clear that section 1 of the act, in so far as it creates a liability in favor of the employe for injuries caused by the negligence of the carrier, is a constitutional exercise of the power of congress.

The constitutionality of that part of section 1 which attempts to create a cause of action in favor of the personal representatives of an employe whose death is caused by the negligent act of the carrier, may be admitted to be of more serious doubt, since at the common law such causes of action did not survive. It is claimed by the opponents of this law, and not without forceful reasons, that in this particular, the act, instead of being a regulation of commerce, operates merely to create a new cause of action where none before existed, and that this power may be found alone under the police powers reserved to the states. In the case of *Sherlock vs. Alling*, however, the action was brought by a personal representative for death caused by the negligence of the carrier under a statute of Indiana. But the supreme court, in their opinion, say: "Until congress, therefore, makes some regulation touching the liability of parties for marine torts resulting in the death of the persons injured, we are of opinion that the statute of Indiana applies, giving a right of action in such cases to the personal representatives of the deceased, and that, as thus applied, it constitutes no encroachment upon the commercial power of congress."

It is also urged by opponents of this law that section 2 of the act cannot be authorized under the commerce clause, because it simply attempts to define the rules by which the measure of damages shall be ascertained, and is, therefore, in no sense a regulation of commerce. If, however, congress has the power to define the liability of interstate commerce carriers to their employes, such power would seem to necessarily include the power to define the rules by which such liability is to be measured. In the case of *Johnson vs. Southern Pacific*, the plaintiff claimed that he was relieved from the rule of assumption of risk, under the common law, by section 8 of the "Safety Appliance Act," which declares that where common carriers violate the provisions of the act, no employe shall be deemed to have assumed the risk thereby occasioned, although continuing in the employment of such carrier. The doctrine of assumed risk is as definitely settled by the common law as that of negligence, in which is included the rule of contributory negligence; and the fact that the judgment in this case was affirmed by the supreme court would seem to necessarily imply that section 8 of the "Safety Appliance Act" was a constitutional exercise of congressional power. But however this may be, section 2 of the act defines a rule of procedure in a class of civil actions. Since the first judiciary act, it appears never to have been questioned that congress not only had the power to create judicial tribunals, but that it necessarily had the inherent power to provide remedies and to define the practice and procedure of such courts.

It is likewise urged that section 3 of the act not only cannot be sustained as a proper exercise of the power to regulate commerce, but is a violation of the fifth amendment to the constitution, which declares that no person shall be deprived of life, liberty or property without due process of law. If, however, congress has power to declare and regulate the liability of employer and employe in the case of common carriers engaged in interstate commerce, it would seem necessarily to follow that they have power to regulate and control the legal effect of contracts as between such employer and employe. If this power were denied the power to regulate would indeed be seriously impaired. So far as relates to like commerce by water, this power was expressly affirmed in the case of *Patterson vs. Bark Eudora*, 190 U. S. 169. The question was also before the court in the Debs case and in the Lottery cases. In the case of *Addyston Pipe & Steel Company vs. United States*, 175 U. S. 211,, the contention that the Sherman anti-trust act was an interference with the right to contract was overruled by the court. The liberty of the individual must, it is true, be preserved; but that liberty should not be so construed as to give the right to individuals or corporations to make contracts which may be inimical to public interest or the public safety, and which the courts are bound to uphold.

It has likewise been vigorously contended that this act cannot be upheld as a regulation of commerce because it does not distinguish between intra-state and interstate commerce, but attempts to regulate alike carriers engaged in both. If this were a proper construction of the law it would seem to afford no just reason why its provisions should not be upheld so as to be binding upon all carriers in respect to all persons, instrumentalities and agencies, whenever actually engaged or employed in interstate commerce. In construing an act, reference should always be had to its title, and the title of this act declares that it relates to the liability of common carriers engaged in commerce between the states, etc. The very first sentence of the act declares that: "every common carrier engaged in trade or commerce * * * between the several states * * * shall be liable to any of its employes," etc. Although these limitations are not expressly stated in other portions of the act, it is clear, I think, that a proper judicial interpretation of the act would require all its terms to be limited to common carriers engaged in that commerce which, under the constitution, congress is authorized to regulate. Moreover, there can be no just reason why the scope of the act should be solely confined to such carrier while actually engaged in the business of interstate transportation. If it employs the same vehicles, instrumentalities and agencies in carrying on both interstate and intra-state commerce, upon what

logical ground can it be said that it will not be subject to the regulation and control of congress. This question came before Judge Whitson in the case of *United States vs. Great Northern Railway Co.*, 145 Fed. 438, under the "Safety Appliance Act." His opinion upon this question is expressed in the following language: "The title of the act of 1893 fully reflects the legislative intent as expressed in the act, and it is manifest that the purpose in view was the regulation of commerce between the states by requiring carriers to conform to certain requirements regarded as essential to the safety of employes and passengers. To sustain the demurrer would be to hold that it is beyond the power of congress to control the instrumentalities through which interstate commerce may be carried on. But the prerogative necessarily carries with it the authority to prescribe the rules and regulations which shall apply to those engaged in it. Illustrations of the futility of any effort on the part of congress to exercise its constitutional powers in this regard, if the contention made by the defendant can be sustained, are not far to seek. * * * A carrier could use trains engaged entirely in state traffic upon its lines, without the requisite equipment, which might result in injury to passengers by coming in collision with a train engaged in interstate traffic. It is a carrier which the acts seek to regulate, and it is by this method that congress has undertaken to bring the matter under control."

We have sufficiently discussed the constitutionality of the law. What shall be said of the public policy which it declares? By it the fellow-servant doctrine is abolished as to all common carriers engaged in interstate commerce, and thus it affords a measure of protection and relief which did not before exist to the million men engaged in this great industry, so important to the entire country, so essential to the welfare and prosperity of all its people. And upon what fundamental principle of right should this protection be denied? To establish as a fixed legal principle that one engaged in a hazardous employment shall suffer without redress because of the negligence of his fellow-servant, over whose acts he has no control and in whose employment he has no voice, is neither humane nor just. Such a doctrine had never been announced in the common law until the year 1837. One after another, a large number of our states have either abolished or modified the law by statutory enactment or by judicial construction. As long ago as 1888, England, whose courts first gave birth to the law, denied its application to those engaged in the operation of railroad trains; and in 1897 made it inapplicable to many other hazardous employments. For a number of years it has not applied in Germany to many of the hazardous occupations. And under the Code Napoleon, which is still

in force in France, Belgium and Holland, the employer is made answerable for all injuries received by his workmen. If the fellow-servant doctrine be enforced in the hazardous employment of public service corporations, the employe is often without redress for his injuries, though guiltless of personal fault; while if this rule be denied, the business of such corporations may in most instances be soon adjusted, so that they will be afforded adequate protection by an appropriate regulation of their tariffs and charges. The public may justly, and I have no doubt will willingly, bear the added burdens of tariff which would thus flow from the adoption of a rule which would afford greater security to passengers and freight, and, at the same time, give an added measure of security and protection to the human agencies employed in transporting the great and growing commerce of our country.

At the last meeting of this Association the President, in his very able and interesting address, reviewed at some length the existing evils incident to the law's delays, and in discussing the remedy made some valuable suggestions, which, with the co-operation of the bar, may yet bear fruit. In this connection, permit me to suggest the inquiry whether these evils may not be greatly diminished by a law designed to reduce the number of reversals upon appeal, and thus to diminish the number of appeals and make a larger proportion of judgments at *nisi prius* final. More than three-quarters of a century ago the rule was announced in England that an erroneous ruling of the trial court of itself entitled the defeated party to a new trial, where an exception was properly preserved.

This doctrine has not been literally adhered to by the supreme court of this state in all its decisions, yet it may be said to be the general rule of decision in that court, as in most of the appellate tribunals of this country. The rule in England has been since changed by statute, and both in England and Canada the following statute is now in force:

"No conviction shall be set aside, nor any new trial permitted, although it appears that some evidence was improperly admitted or rejected, or that something not according to law was done at the trial, or some misdirection given, unless in the opinion of the court of appeals some substantial wrong or misdirection was thereby occasioned at the trial."

Since the organization of the supreme court of this state, it is estimated that at least fifty per cent. of all cases on appeal have been reversed. A few years ago the American Bar Association caused an investigation of this subject to be made, and it was ascertained that forty-six per cent. of all cases on appeal to the various appellate tri-

bunals of this country were reversed, and, for the most part, for merely technical errors. Under these conditions, it is not surprising that the trained lawyer devotes his ability and skill less toward securing a just judgment in the trial court than in securing and preserving error in the record, in order that reversal may be obtained upon appeal, if the issue be unsatisfactory to his client. To remedy this evil, the following amendment to the Federal Judiciary Act has been proposed:

"No judgment shall be set aside or new trial granted in any case, civil or criminal, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court to which the application is made, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice."

The English act, after which this proposed law is modeled, has resulted, in actual practice, in the reversal of less than three and one-half per cent. of the cases appealed. I have no doubt that certainty and swiftness of justice will do more to reduce crime, secure the peace of society, and promote the interests of commerce, than the multiplication of statutes. It is not so much the enactment of new laws, as the swift and certain enforcement of those now existing, which the public welfare demands. I therefore commend the careful consideration of these laws to this meeting.

The period in which we live has known no counterpart in the world's history. The constructive forces of society have lost inertia, only to gain momentum. There is no rest: "all is action, all is motion, in this mighty world of ours." The progress of science and the material arts, the growth of commerce and trade, the increase of population and wealth, find no parallel in the history of the past. In the swift pace of today men find little time to pause and take their breath. Out of these new conditions, new relations of government to society, and of society to the individual, have necessarily arisen. From the course of legislation and judicial construction which has been here briefly reviewed, may be discovered some of the tendencies of modern thought and progress, of the newer philosophy, born of these newer conditions. To give it proper application, however, sober thought and reflection are required.

The power of government must be upheld. Its laws must be enforced. Where these laws are inadequate to define the rights or to safeguard the interests of the public, new ones must be enacted. But such laws must be born of necessity and framed with wisdom. Greed and avarice, organized power and wealth, combinations of capital and

labor, must neither be permitted to destroy the peace of society nor to menace the safety, the health or the happiness of the people. This is not only the province, but the duty of government. In the dual system which obtains in this country, peaceful conflicts must necessarily arise in the exercise of the power of government. Indeed, it is the marvel of statesmen and jurists that such conflicts have not more frequently arisen in the past. But whenever they shall arise upon any of those great questions which involve the interests and welfare of the whole people, and which fall within the objects and purposes which were intended to be embraced in the scope of the federal constitution, the state must yield to the nation. That great document was born of the necessities of our forefathers, and was framed to preserve their liberty and ours. It has been sustained and upheld by the blood of our fathers and brothers; and whenever it shall be found by judicial construction to be inadequate to preserve and protect the fundamental rights of all the people under one government and one flag, they will in the future, as they have in the past, enlarge its terms by amendment.

The most conspicuous exponent of this newer philosophy which has directed the tendencies of recent legislation, is that peerless citizen, statesman and publicist, the great Chief Executive of our nation. The achievements of today are but the beginnings, the first fruits of this philosophy. To borrow the words of Macaulay, in eulogy of the philosophy of Lord Bacon: "These are but a part of its fruits, and of its first fruits. For it is a philosophy which never rests, which has never attained, which is never perfect. Its law is progress. The point, which yesterday was invisible, is its goal today, and will be its starting place tomorrow."

And in this march of progress we must not proceed without a reckoning of our speed. We must not overlook the rights of the individual. He is the integer. Without the preservation of his rights and liberties, the first fruits of free government would be aborted; without it there can be no patriotic whole.

Twice have the people declared, by amendment to our national constitution, that no person shall be deprived of life, liberty or property, without due process of law. This is the guaranty of individual liberty and right; and whenever it is denied, the power of the mob will be invoked. Speaking of the citizen under the British constitution, Lord Chatham declared: "The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail, its roof may shake, the wind may blow through it, the storm may enter, but the King of England cannot enter. All his forces dare not cross the

threshold of the ruined tenement." And what is true of the rights of the individual under the constitution of Great Britain is yet more true here, under the "Stars and Stripes," in this land of freedom.

Let me conclude these remarks as I began, by an appeal to the conscience, to the character, to the courage and the patriotism of the members of my profession. Under this newer and better philosophy, in this era of peace and prosperity, in this age of enlightenment and progress, the decrees of force, the violence of the mob, the arbitrament of war, are—they must be—numbered with the things that are past. It is ours to point the way of peace, to preserve individual liberty, to protect popular rights, and to uphold the sovereignty of the nation and the state. Let us neither take nor permit any backward step.

"For him who's kept the sword of Justice clean,
And helped to make the bulwarks of the law
Fit for the sentinel tread of Peace, for him
No mere oblivion waits, but being dead,
Yet will his voice in after ages speak,
In code and valued volume of the law,
And monuments of honor to the mind."

Address of Hon. James R. Garfield

(This address was delivered extemporaneously and reported by the Association reporter.)

It is particularly agreeable to me to meet with the members of my own profession and to listen to what your Honorable President has said to you today, and to take part, in some small way, in the discussions of your Association. I want to talk with you for a few moments about the increase and advancement of federal activity. Your President has outlined and more than suggested the growth of some portions or features of the commerce clause of the constitution. It is my purpose to refer to that, and as well to the other clause which gives to the United States the right to legislate for and in connection with the territories and other property of the United States. To a body of lawyers, I think, there can be no more interesting legal study than the development under those two provisions of our national constitution.

The commerce clause originally seems to have lead but to very little legislation and but to very little active participation by the Federal Government in the industrial and commercial activity of our nation. It is true that, for the purpose of doing away with the difficulty of commerce between the states, the original convention was called, the commerce which was even then developing during those years prior to the adoption of the constitution itself, and it is true than then, during the time of the framing that great instrument, the political features—the political clashes that arose at the time of the formation of our republic were all in force and quite swept aside, for the time being, in the keen participation—or rather the keen study—of those few words which are now known as the commerce clause. But it was soon found out that those few words contained more of interest, more meaning and more future development than almost any other words in that great instrument. The industrial or commercial development had fuller opportunities, and immediately moved ahead with such rapid strides. after our political independence was firmly established that we were able to do away with, or rather to put in the back ground and forget those greater political difficulties that attended our country at its birth. That industrial development showed very clearly the meaning and importance of that single clause. Of course, as we view it now, it seems incredible that there should have been such sharp discussion

over the meaning of those few words. But for the fact that we had on the bench a man of such splendid honesty and discernment at the outset of our public, we would never have had the interpretations that would have made possible our commercial development. I think we have not fully appreciated that side of John Marshall's character which made it possible for him to see clearly and to appreciate the protentious force contained in the commerce clause. It was not his keenness of perception alone, but it was also that breadth of view, that prophetic comprehension as a statesman which lead him to view the commerce clause as he did; and so, in the decisions to which your President has referred, he laid the foundation for the development of our commerce and for the interpretation of the other clauses, which have so frequently been brought to our attention as lawyers during the last twenty-five years.

I do not intend to weary you with the recital of the steps that have lead up to the present decisions of our supreme court, but merely to suggest that, year by year and decade by decade, as the industrial progress of the country was presented to the court, the court, not listening to popular clamor, nor heeding the occasional cry of the radical, but recognizing the genius of the age, interpreted that commerce clause to mean the commercial genius of the age, and so the decisions were rendered. It is that power of development, under our constitution, that is one of the tremendous influences under our form of government.

I do not mean to say that interpretation can take the place of amendment, not by any means; or, on the other hand, we do not want to take the other view and believe that interpretation should be so strict that it retards the development, in accordance with the well recognized principle of the interpretations of these questions. In other words, when the power is given to the legislature to legislate, authority is also given to the court to properly interpret under the commerce clause of the constitution. Where the extent of the power to which it should be carried is determined only by the conditions and limitations surrounding such interpretations, it gives it an effect almost the same as an amendment. Because an interpretation of that clause, under such condition, means that year by year, as new phases of industrial life are presented and as new conditions arrive, as conditions are affected by new elements, the definition of the word "commerce" must necessarily be enlarged. And when the great Marshall used the language that "commerce was intercourse in its broadest sense," he very wisely left open the future definition and enlargement by interpretation of the meaning of the word "commerce." This judicial

interpretation has been most active during the last fifteen or twenty years, and this activity has been caused by the tremendous activity in commercial life and because of the growth of our corporations.

Now many of the amendments to the present legislation relative to interstate commerce is thought to be aimed against or inimical to corporations. But we would have much less discussion and much less written on the subject of corporations if this matter were better understood—if corporations were the entities that were intended to be affected primarily and solely under the commerce clause of the constitution. But we know that is not true. That clause does not deal with corporations. It deals with them only as it deals with everyone engaged in interstate commerce. It deals with the individuals engaged in interstate commerce. It deals with the partnership engaged in the interstate commerce. It deals with the corporation—all of them, together are equally brought under subjection by the laws of commerce applying to interstate commerce. But because of the tremendous growth of corporate activity, because of the combinations of capital brought under corporate forms, because of the great powers which corporations are given by the different states, we have finally found it necessary among those corporations engaged in the interstate commerce to re-pose certain restrictions upon combinations which were made possible by reason of the remedy clause. Therefore the discussion has almost been entirely directed toward the regulation of the corporation rather than the regulation of the individual. Yet, I am sure, that as years roll on the same rule applied to corporate activity engaged in interstate commerce, will ultimately be applied to individual activity as well; which means that, as conditions change, the courts will apply the means of enforcement of the law of commercial relations, and will impose those regulations upon partnerships and individuals as it now imposes them upon corporations.

Now if you examine the laws you will see why we needed to impose the restrictions and regulations upon corporations. That this is true, and that commercial entities in corporate form have required such regulation, has been due largely to the differences in the laws of our separate states, and it has always been the work of the lawyers to work out this question of the industrial problem. The laws of the different states have been diverse in character and purpose, with the necessary result of very great differences in interpretation as between conflicting statutes in different states, until congress itself has had to disregard state boundaries. It has had to extend the jurisdiction beyond the state in which the corporation originated and deal with an entity—a commercial entity, either corporate or otherwise, which has extended

its operations far beyond the confines of the jurisdiction of that particular state, and has spread, not only throughout our own country, but into foreign jurisdictions. I think it is self-evident that an entity of that kind, once started and given great powers as corporations have been given, that if they permit that man or body of men, or that entity, or that corporation, unrestrictedly, to extend its operations, unlimited and unregulated, and beyond the jurisdiction—beyond the borders of the jurisdiction from which they sprang, they will sooner or later exercise and assume a power which is not only contrary to the law of their creation, but will also assume political power and a strength over that of the creator itself. In other words, a corporate power, unregulated, very quickly assumes political power in the locality where it has its seat of activity.

Now, therefore, as we find these great corporations extending their power over other territory than that in which they were created and beyond its laws, we must find some means of restriction and regulation. This was first attempted by the different states, but by reason of the tremendous power already mentioned, the states found themselves unable to cope with this new commercial force under corporate form. The states cannot be and are not in harmony because of their diversity of interests. Therefore the people appealed to congress as the only jurisdiction that was co-extensive with the field of operation of the corporation itself. Congress has acted; first, in regard to interstate commerce carriage, and gradually extending that jurisdiction over other forms of commercial activity. The common carriers were the first to be affected by the commercial power, because, naturally, they are beyond the jurisdiction of the state; naturally they run through many jurisdictions and cannot be properly regulated by civil state authority.

The next subject that will be taken up will be the extension of this work to the limitation and regulation of other industrial corporations, as well as the common carriers. The common carriers are confined, naturally, to the railroads, together with the express companies, the telegraph companies, the telephone companies and the water carriers, and each class of these have, in many instances, taken to themselves powers other than the mere power of transportation. They have entered into business equally tremendous, including mining, smelting, milling, fruit companies, manufacturing, and other lines, in order to serve the needs of their transportation companies in certain localities. I take it as a self-evident proposition that the Federal government will not have its hands tied by a mere diversion of this power. They claim that the industrial corporation and the manu-

facturing corporation does not come within this commerce clause but it has been construed by the supreme court that a manufacturing corporation or an industrial corporation which goes outside of state lines and there, either directly or indirectly, engages in the sale of its products thereby becomes engaged in interstate commerce. If the company engaged in transportation, owns one or two others by intercorporate relations the business is carried on, the whole immediately becomes an agency of interstate commerce.

How far the courts may properly, or wisely, extend this jurisdiction beyond the greater corporations will be worked out, year by year as the need arises. I think it apparent to all those who have studied the question, that this power should extend—this power of affirmative action and regulation—should extend over those greater industries which affect the supplies of life, or the necessities of life of the people of this country. That is, those corporations which engage in taking the source of supply from Mother earth and distributing it over the country—those corporations which transport the fruits of the soil—the food products and the fuel industries, and all of the great industries affecting the necessities and supplies of life. These should first come under active, direct, affirmative control of Federal regulation. And, when we speak of "regulation" I do not mean "confiscation." These are two words which are far apart. When we speak of "regulation," we should keep clearly in mind the distinction between "regulation" and "confiscation." "Regulation" is not destruction but construction. The purpose of regulation is not to affect one or more engaged in interstate commerce, but to put all upon an equality that may be engaged in interstate commerce. (Prolonged applause.)

First, the freedom of the highway is and must be the doing away with all discrimination in favor of one corporation and against another or one individual and against another, as has appeared to be the case in the past. And, though there may be unfairness and discrimination and lack of equality toward certain concerns, yet it is the purpose of recent legislation to do away with all inequality, and to do away with all forms of favoritism that have been and are opposed to the principle of equality of the highway.

Let us see by examination, how that is being worked out. The present legislation and activity that the government is now engaged in is the question of oil discrimination. One of the great corporations of the country thought it had found a way by which it could successfully obtain certain advantages and yet be within the spirit and the letter of the interstate commerce law. It was maintained that the rate authorized in various localities where the Standard Oil Com-

pany was operating was proper, and that its method of obtaining certain special rates was not contrary to law. That, if those discriminations were obtained within a single jurisdiction, and were not extended without the jurisdiction of that state, they were not covered by the interstate commerce act. It was the contention of the government that, as these rates were but a part of the general scheme of rates, that, if you merely carried your property across a state line at the published rate and then carried it within that state at a special rate, you were as much a violator of the law as if you had carried it through on the special rate. It is apparent that one of the first questions which would come up would be as to whether or not there was a discrimination of this kind and whether or not the competitor is compelled to pay a higher freight rate than the larger company. Those cases are now pending to determine whether the attitude of the company is correct, or whether the government is correct. In every jurisdiction so far the courts have sustained the position of the government, and, I believe, in the end, the supreme court will necessarily follow those lower decisions. If that were permitted and held to be legal, if by any device one company can obtain a lower rate than a competitor can obtain, and that lower rate is sustained by the courts, then the whole future of the Interstate Commerce act is gone. If, by the use of special privileges within a state, a shipper may do something which his competitor cannot do, he certainly has obtained a discrimination to that extent and they are not on an equality with each other as far as transportation is concerned. Therefore, we maintain that the more clever the device, the greater is the violation of the law; because there is then, not only the result of the violation of the law, but also the unlawful intent to so act as to keep within the law, and then to obtain the same result as if the law were violated. I believe the courts will strip it of every vesture of technicality and subterfuge and look merely to the result of the action to the individual shipper.

In imposing regulations and restrictions, those regulations and restrictions should be reasonable. We do not want to attempt to do by the government, through legislation, or regulation or restriction, that which the individual can best do for himself. We do not wish to substitute governmental agencies to affect an end which the individual can better reach alone. We do not want to shut off the initiative which lies with the individual. We do not want to assert or substitute departmental action and take away the result of individual work and individual success. We want to intensify and increase the possibilities of individual success, but while we do that, we must see to it that the

successful individual is not given the opportunity to impose upon his less successful competitor. (Applause.)

It is my belief that in dealing with the industrial corporation it will be found that a system of license is much more practicable and more readily applied than any other form of regulation, for then you do not touch the creation of the corporation itself. A manufacturing corporation is created under the statutes of this state and seeks to engage in interstate commerce. All it has to do is merely to apply to the proper federal officer to procure a license to engage in interstate commerce. You would not have to disturb the law in force; you would not have to disturb other domestic corporations, but merely arrange to license those corporations which desired to enter into commerce outside of that state. They would comply with a few regulations which would be imposed by the federal authorities and the license would be granted. One of those regulations would be a full and complete publicity of corporate action. When granting to men the power of perpetual succession, it is advisable to have the law in such shape as to enable the government and the people to know with whom they are dealing.

Then again, publicity does not mean the infringement of private right. It does not mean the destruction of any right to privacy, but simply that a corporation, deriving its right to existence from the state or federal authority, should show who its stockholders are; who its directors are; what property it has; how it is using its property; the value of its property, and its relation to all other corporations. We have a right to know whether a railroad company is owned by its stockholders, or whether it is owned by some other railroad company. We have a right to know whether a mining company, a manufacturing company or a lumbering company, along the line of one of our great common carriers, is owned by its stockholders or is owned by the common carrier over whose line it transports. Publicity must be the beginning of a fair relation with a corporation which derives its whole life and its power from the state itself. So that publicity imposes that form of restriction and regulation which will most easily do away with many of the corporate evils. It will result in corporations being owned and managed by men whose characters are known; whose homes and lives are known; whose everyday walks of life are known; whose neighbors and associates are known, and who are known to be men whom the people can trust and honor. This is the only way the desired end can be accomplished. When you, in this state, deal with corporations when your board of commissioners take up the consideration of the commercial status which the President has outlined to you today, I

think it will be well for you to bear in mind that the procedure and operation of your state organization and agencies should incorporate the publicity feature and a provision for proper penalties on the proper officers of the corporation who do wrong. This does not mean that it will be necessary to so restrict the powers, or that these powers should not be given to the corporation, but simply this—that I believe we should so restrict the powers of the corporation that a few enterprises should not be given *carte blanc* to do whatever the directors may desire. I think these powers should be directed along the line which will enable a state to ask for information and get it—and when the public demands to know who they are the information will be forthcoming, and that they shall not pursue a policy of covering up their records or one person doing business in the name of another, but that it shall be given a wholesome publicity.

I have no fear of federal legislation, or that congress will overstep its power under the constitution. Those powers must be drawn from the constitution and must be found within its limits. The history of our country shows that congress does not act hastily but that they obtain full information and act with caution. Many of us believe that it does not move fast enough. I think the last few years has demonstrated the general wisdom of congressional action.

As to the question of the power of congress over the property of the United States, it seems to be settled that they have the right, and should have, to govern this property and to control the exercise of the development of the resources of the public domain which is now being carried on by different corporations who are seeking now to exercise their power even over the territory themselves. This control over the territory is one that is particularly within the province of the federal government, and was given force under the commercial laws. The question was decided in a recent case of *Kansas v. Colorado*, 204 U. S., 331, where there is a full and complete discussion of it; and the court does not there take away in its decision, the power of congress over the territory or over the possession of the property in such territory. It is a question that is of tremendous importance to you people of the West in what is left of the public domain. Whether or not the water powers, irrigation districts, lumber interests and other lands shall be developed by individuals or whether the control shall be in the hands of a few corporations I say the settlement of this question is of vital consequence to you people of the West, in what is left of the public domain which will soon have vanished.

Congress is also interested now in the settlement of another question, of which I want to speak to you for a moment. You have in this

state a tremendous area of coal land, more or less undeveloped—most of which is wholly undeveloped—lying there awaiting for the hand of man to furnish the necessary brain and sinew required to bring it into use. It is my belief that those resources should not be allowed to pass into the hands of the few; that they should not be given away, but that they should be so handled as to conserve their use and to bring to this state the greatest good and to the greatest number of its citizens. It is entitled to the most careful attention. (Applause.)

This question of the regulation of the coal lands will naturally come up for solution and it is for the lawyers to make a study of the laws and solve the problem. It is a question of the proper amendment—the proper laws to fit the case. The proposition in this state is different from the coal lands in the east. You have greater questions to consider, the character of the native coal, questions of tremendous distances, the value of the land, and many other questions that do not enter in other sections. So far we have been unable to obtain the amendments we desire and under the present law there are thousands of acres of coal properties awaiting development, or held or claimed to be held by coal companies. In many instances, great areas have been taken and held by these corporations who have developed and worked them, and it is my belief that we have been too easy in dealing with this question. The coal question, and the timber question, that is, the accumulation of large tracts of land by single corporations of immense wealth and seemingly unlimited power, is a question which must be dealt with promptly. Congress, I believe, will deal with the question, and it seems to be the disposition of the people to provide a way by proper laws to prevent monopolies passing into the hands of the few and to enable the settler to secure the rights which the government intended he should secure.

One of the questions that has been raised is whether the power has been given to the state to handle these questions and whether the state must by regulations exercise the power. We think this question is settled and congress still has the right to regulate and control the public dominion and conserve the various resources contained in it. It is now trying to prevent a monopoly from securing control of all the resources which should belong to the people. We believe that congress has acted wisely in the government of the public property, and in view of the steady growth and the gradual increase in population and improvement I believe you will find that congress has acted, not only within the rights given by the constitution, but has generally exercised great wisdom in dealing with the various portions of the public domain. The whole purpose of the laws have been to provide a home

for the settler; and on those arid lands where irrigation is possible and where water can be had to make the land fertile and to make possible the building of homes on such land, this is also being done. Everything is being done to help the settler to make a home. Some of this arid land is simply a great public ranch where thousands of head of cattle and sheep are roaming at large, and through the good offices of the reclamation service we are able to reclaim thousands of acres and make many people homes on public land that otherwise could not be used. It clearly has the right, under the constitution—congress clearly has the right to so use this property as to make it available, so that it is possible to find splendid homes and farms where there was nothing before. And so I might go on with other questions and show what congress has done along the same lines, but if we study these questions we will find them uniformly adequate and with a view to a betterment of conditions of the public service and we will find that instead of being obstacles to development under these two great causes, that they have been the means of putting them in force and that the enactment and the construction and interpretation of these two clauses has been the salvation of the development of these great resources.

The chairman has stated and I believe most fairly, that we should consider ourselves members of the Union and not as members of different states. To the lawyer the state rights doctrine is one of most interesting study, for the lawyers can go into it from a legal standpoint. But that is not true with many people outside of the profession. That question came up in the early stages of our development and it was assumed that when the state rights would come in conflict with the combined rights of the states these latter would most naturally give way; but it was settled that the federal rights were paramount. And we assume now that when these rights come in conflict the state rights will be superseded by federal rights. That does not mean that the state will be wiped out of existence. It does not at all mean that. Any power that the state has as a sovereign in itself will be continued by the federal government, but those powers which reach outside of state boundaries must be made subservient to the federal law when they come in conflict with it. The two will go together side by side as the industrial growth of our country continues and year by year will meet the new conditions and problems coming before them. They will be equal to the question and will determine in each instance for the best. And this harmony and law, based on our constitution will be our guiding star which will lead us on to the highest destiny that any nation ever had upon this earth. I thank you. (Great applause.)

The Lawyer Under Fire

By Hon. H. E. HADLEY.

Mr. President and Gentlemen of the Bar Association :

No subject was assigned to me for this occasion. I was, however, requested to prepare a paper and to choose my own subject. With this privilege of selection I have sought to avoid the discussion of any legal question, inasmuch as you who hear me may possibly feel that you are entitled to a rest from that sort of discussion at the hands of this writer.

I have written at the top of this page, "The Lawyer Under Fire." That the lawyer as a professional type is today standing upon the fire line of adverse criticism must be taken as true, in view of recent criticisms made by distinguished persons, such as Justice Brewer of the supreme court of the United States, the Hon. William J. Bryan, and others. The criticisms are undoubtedly wholesome when viewed, as they were doubtless intended to be, from the standpoint of sounding a note of warning to those who are charged with responsibility as to the character of the men who shall be received and retained in the ranks of lawyers. When, however, criticisms are offered by such eminent members of the profession, they should be so guarded as not to possibly mislead the public mind. The truth as to the profession may always be stated without reservation, but it should not be stated in such figurative terms as may tend to exaggerate the real facts in the minds of the people. Mr. Bryan, when addressing his fellow alumni of the Northwestern University Law School in Chicago last May, is reported to have said: "Perhaps, sometime, it will not be less diagrammatic for a lawyer to assist in a gigantic robbery than for a highwayman to go out and hold up the wayfarer." The statement is both epigrammatic and forceful; but there is seemingly contained within it an innuendo which I do not believe characterizes the lawyer as a type, or the sentiments of the great mass of American lawyers as men. I have the honor to belong with Mr. Bryan to the same Alumni association which he was addressing. We were primarily drilled in the same school of legal ethics, but my subsequent experience has not led me to the conclusion which his remark seems to imply, that it is a trait of the profession to excuse its members who commit robbery through forms of law.

There are, it must be admitted, members of the profession who entertain such views, but comparatively speaking the number is insigni-

nificant. The aggregate weight of such sentiment and character, when placed alongside the great weight of wholesome, manly, honorable sentiment of the many thousands of American lawyers, is as the little brook compared to the ocean into which it flows. By this, I mean to assert that the character of the typical American lawyer is that of an honest and honorable man. His whole training is that of fidelity to trust. If he is found lacking in trustworthiness he does not survive as a business factor for a single year, when surrounded by an honest clientage. A dishonest clientage, however, seeks a dishonest lawyer, and requires in return for the price of his services that he shall adopt and pursue the necessary questionable methods to effect the ends desired. If you remove from the community all those persons who have a desire to plunder others through tortuous methods, sometimes erroneously termed "business" methods, you will thereby remove all demand for the tortuous lawyer, and his species will disappear.

To eradicate an evil we must begin at its root; that is to say, we must remove its cause. Such lawyers may be suspended or removed from the field of practice, but that does not wholly cure the evil. The soil from which such grow has not been thereby changed, and others will spring up to take the places of those removed. Until a dulled public conscience has been so quickened by the virtue of truth and honesty that it shall accord to common dishonesty the same ignominy as to common felony, there will exist the demand for lawyers to undertake disreputable methods. The demand will always be met by an adequate supply; despite the efforts of legislatures, bar associations, or other commendable agencies.

A popular error in the criticism of our profession lies in the fact that the ordinary critic assumes that the evil is a spontaneous growth from the profession itself, a necessary, inherent part of the system. Upon the contrary, as we have seen, the evil is largely the manifestation of causes which are wholly without the profession, springing from the community at large, and by which, unfortunately, some members of the profession are attracted and moved to responsive action. When, therefore, the community criticises, it should not be unmindful of its own duties and responsibilities in the premises. Moreover, it should avoid the too common error of assuming that, because some lawyers pursue dishonest methods, it follows that the profession as such must approve and adopt such methods. It would be as reasonable to assert that, because some so-called physicians habitually undertake to effect abortions, the entire medical profession must therefore approve of such conduct. It might as well be said that, because occasionally a clergyman has been found to be unworthy, he is therefore merely a

product of a system which his professional brethren are engaged in maintaining.

As lawyers, we well know that the overwhelming sentiment of our profession regards him who betrays his professional trust or who seeks to plunder his clients or others for his clients, as a veritable black sheep who should be expelled from the flock at the earliest possible moment. Our vigilance in this regard should never be relaxed. The lawyer who betrays his trust or who deliberately incites controversies that litigation may follow, is an enemy of the human race and is innately a devil. We have seen that the type of attorney who pursues plundering methods because his clients demand them is the product of the community itself. For his existence society as organized must largely assume the responsibility, and must share with the profession the odium of his methods and the results.

There is another type, however, that cannot be charged up to society. He is the attorney who betrays the trust he has assumed in behalf of his clients. There is no demand from any source for such as he. No one, however depraved his views of life, desires the services of an attorney who will be untrue to the responsibility and trust he assumes. The profession is primarily no more responsible for him than is the community. He is one of those unfortunate freaks of Nature—a common criminal, a parasite upon society, who has by mistake been enrolled as a lawyer. The profession must, however, assume responsibility when the criminal has been discovered. No time should be lost in dropping such from the attorneys' roll, with notice thereof to the world. In such way only, can we protect an innocent public from the evil designs of such men. Much care should also be taken to see that new applicants for admission to the profession are men of honorable character. The character of the men is equal in importance with the grade required for their examination papers. I repeat the well known sentiments of my professional brethren at large. It is their desire to preserve a trustworthy body of men who shall discharge the high responsibilities of lawyers as honorable men.

While it is true, therefore, that the lawyer is now under fire, yet as the true soldier he stands up before the fire and neither flinches nor retreats. When the smoke has cleared away occasionally a comrade will be found to have fallen, but the many thousands will emerge erect, sound, and manly. Lawyers have long endured the fire of criticism. Much of that which has been directed toward individuals for specified shortcomings has been recognized as just, and the circumstances have been genuinely deplored. But when the criticism has been directed towards lawyers in general, its injustice has been keenly felt. It is

a sort of popular fad to criticise the legal profession, and often the critics are those who actually demand the same things which they criticise in the lawyer. While this is by no means generally true, yet it is too often so. When there is a dearth of other subject matter for criticism, the legal profession is often held as reserve stock for that purpose. The press, pulpit, platform and other agencies each takes its turn and fires its volleys. But, however great the criticism, the lawyer as a factor in the community still exists. He has been an important factor in all ages of civilized society. What sort of society would you have without him? Imagine a state undertaking to exist without lawyers. A state cannot exist without organization, system, and methods. All the people cannot study the details of those methods. Some must be busy with agricultural pursuits, with mechanical construction, with mining, and with commerce. Neither a Utopian society nor the millennium itself could dispense with lawyers, for there must be system if there is harmony among men, and there must be those who study the system and who can assist the masses of the people in conforming thereto in relation to their personal and property rights.

As lawyers and as men we accept in the true spirit all just and reasonable criticism. We bare our shoulders to all the chastisement necessary to recall us to the pathway of professional rectitude. But, when all is said and done, when even the critic has tired of the subject, we are gratified to know that even he turns to us for consolation and guidance. He suddenly discovers that we are trustworthy and that we are indispensable to his happiness. At all stages of his life he seeks to avail himself of our knowledge, which we have acquired by long years of hard study and harder experience. When the child is born we are sought for an explanation of its personal and property relations to the family. When the wedding has occurred we are asked to tell what is the effect of the newly established relation upon personal rights and financial affairs. When active life is busy with its manifold and tangled affairs, our services are many times sought to untangle the confusion and to restore order and peace. When the end of life is approaching we are entreated to assist in making a distribution of worldly accumulations. When the dark river has been crossed, we discharge the sacred trust left to us by him who is gone, and we carefully see that the message of his last will is promptly delivered, and that its terms are faithfully enforced. Thus, however much the lawyer may endure under the fire of censure and criticism, it is for him to know that he fills a sphere of usefulness to the community, to the state, and to humanity that has few, if any, equals among the vocations of mankind.

Navigable Waters

By W. H. ABEL.

It is generally considered that under the common law, the navigability of a stream depends upon whether it is subject to the ebb and flow of the tide. Without considering whether this is a correct statement of the common law test of navigability, it may be premised that such is not the rule in the United States.

From the power granted by the federal constitution to congress to regulate commerce with foreign nations and between the several states is deduced the federal jurisdiction over waters which are capable of being used, or are used, in interstate commerce. Not every stream capable of navigation is under this test, considered navigable for interstate commerce.

One of the leading cases on this point is that of "The Daniel Ball," 10 Wall. 563, where it is said:

"Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. And they constitute navigable waters of the United States, within the meaning of the acts of congress, in contradistinction from the navigable waters of the states, when they form, in their ordinary condition, by themselves, or by uniting with other waters, a continued highway, over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water."

In the case of *United States vs. Bellingham Bay Boom Co.*, 176 U. S., 211, Nooksack river was held to be navigable for interstate commerce, where it was navigable by light water crafts, a distance of some 16 miles, although there was no proof of the actual carriage of goods on the river in interstate commerce, and the principal business on the river was logging, and groceries, supplies, etc., were transported by small steamboats. It thus appears that actual use in interstate commerce is not necessary, and that the capacity of the stream for such use is sufficient.

In this and in quite a number of other states, streams are considered navigable and therefore public highways, although they are not subject to tidal action, and are not of sufficient capacity to use in the custom-

any mode of transporting interstate products. Streams which in their natural condition are capable of valuable use in the floatage of timber products, are navigable waters in this state. Some of the other states do not recognize that such a limited use is a proper test of navigability, but in a number of well reasoned cases, our supreme court has firmly committed the state to this rule. The reasons advanced are well stated in the case of *Monroe Mill Co. vs. Menzel*, 35 Wash. 495:

"The reasons leading to the holding in this state and others where the timber industry is important, that streams which are navigable in fact for the floatage of timber to market shall be public highways for that purpose are founded upon commercial convenience and necessity because of the environment of the industry. Much of the timber grows in the mountains, also upon the foothills, and in other localities which are inaccessible by means of transportation facilities without great expense. Nature has, however, provided numerous streams which flow out from these timber centers and which are available highways for the carriage of the timber to market. In a locality so situated it seems reasonable that these highways should be used for such purposes."

And in said case it was held that a stream which could be used only for the floatage of shingle bolts singly, was a public highway for that purpose.

It is not deemed necessary that such a stream shall be navigable for the floatage of logs and timber products at all seasons of the year, nor at all stages of water. It is sufficient that such streams can be utilized periodically. They must, moreover, be capable of use, in their natural state, and not depend upon artificial freshets nor other artificial aids to temporary use.

By statute it is provided that "all meandered rivers, meandered sloughs, and navigable waters in this state shall be deemed as public highways." (1 Bal. 4386.) This provision is found in the boom statute enacted in 1890.

Since navigable waters are public highways, all persons have an equal right to use them for the purposes in which, or for which they are navigable, and the only limitation upon the individual exercise of such right is that all others have a like right. In this respect there is no difference between a public water highway and a public highway upon land. There are, however, special rights conferred upon public or quasi-public corporations respecting the maintenance and operation of booms and dams, regulated by general law, and intended to serve the convenience of the public engaged in the use of such streams.

Apart from the question of the use of navigable waters, is the question of the legal title to the water and its bed and banks. As to public highways upon land, the right to use the same is vested in the public, but the legal title to the soil is, as a general rule, vested in the abutting owner. As to navigable waters, the public have an absolute and unqualified right to use the same for purposes of navigation, which right is paramount to the use or consumption of water for domestic or manufacturing purposes, or for irrigation, or for any other purpose whatever. Indeed the unqualified paramount right of navigation in navigable waters was established by the common law many centuries ago, and of recent years this right has broadened as above shown to include waters not navigable for boats or water craft, but navigable only in the floatage of timber and other products of the soil. The tendency has been not to limit, but to expand this right.

The title to the bed and shores of navigable waters rests upon a different basis and a diversity of rules exists among the several states. It has been the policy of the national government in its dealings with the territories to reserve from sale, or other disposal, the submerged lands covered by navigable waters. Such lands are held in trust for the future states to be carved out of such territories. This was the policy adopted in creating the state of Washington.

The state constitution contains this declaration:

"The state of Washington asserts its ownership to the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes: *Provided*, That this section shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the state."

While it is the policy of congress not to grant, nor otherwise dispose of, the beds and shores of navigable waters below the line of ordinary high water, yet in actual practice, patents are occasionally issued to submerged lands by inadvertence. The title thus vested is safeguarded by the proviso just read.

Although in terms this assertion of title by the state, applies to all navigable waters, navigable rivers and lakes, it has received a construction by the supreme court of Washington in effect, that it has reference only to such streams as are navigable for general commercial purposes and not to those which are public highways, merely for the floating of logs and timber products. This was held in *Watkins vs. Dorris*, 24 Wash. 636. It does not appear from the opinion whether the stream involved in that case was meandered, and it may be the court assumed

that it was unmeandered, in which event the holding of the court is in consonance with well established principles. If, however, the court held that, irrespective of whether the stream was meandered or not, since it was not capable of being used for general commercial purposes, and therefore not navigable within the meaning of the declaration of ownership above quoted, then it follows that it is only as to such waters as can be used in interstate commerce, to which title to the bed and shores rests in the state. If so, we have in this state two classes of navigable waters, the one navigable for general commercial purposes, the other a restricted use for floatage of timber and other products. As to the former the bed is owned by the state, while the latter is the subject of private ownership.

Thus it would seem that as to navigable waters not capable of use for general commercial purposes of navigation, the upland owner, being the owner of the bed and banks, would have as incident thereto the right of access. Of all riparian rights this is the most valuable, and undoubtedly exists where the bed of the stream is owned by the upland owner. But in the early and very important case of *Eisenbach vs. Hatfield*, 2 Wash. 236, our supreme court took advanced ground, holding that the doctrine of riparian rights, including the right of access, did not apply to the navigable waters of the state.

Great diversity exists among the several states upon this question, but the doctrine is firmly settled in this state that there are no such rights. Moreover, it would seem that, since the state, under the enabling act, and its assertion of title contained in the state constitution, owns the beds of all navigable waters, rivers and lakes, that there is no room left for the assertion of individual rights below the line of ordinary high water mark.

In the case of *Lonsdale vs. Grays Harbor Boom Co.*, 21 Wash. 542, the *Eisenbach* case was followed, the court holding that the upland owner could not recover damages by reason of the maintenance of a boom, which obstructed his alleged right of access to a navigable but unmeandered slough.

The denial of the right of access to navigable waters is partly compensated by the policy of the state to sell its tide lands, awarding the preference right of purchase to the upland owner, if exercised within a limited period, and a like preference right to lease harbor areas, but as pointed out in *Morse vs. O'Connell*, 7 Wash. 117, the tide land owner is not to be considered in any sense a riparian owner. This doctrine was also announced in *Scranton vs. Wheeler*, 179 U. S., 141, in which it was also held that even if under the state law, the right of access to navigable waters was recognized, yet the obstruction or denial of

such right, which resulted from the erection of a pier by the federal government in aid of navigation, was not the taking of private property without due process of law, and that such state right of access was subordinate to the paramount right of navigation, in behalf of interstate commerce.

Meander lines along the banks of navigable waters are run in surveying public lands, and it is usually considered that such lines are established to facilitate the computation of areas. Quite frequently meander lines do not extend to the line of ordinary high water mark in which case the subsequent owner by patent takes title to the line of ordinary high water mark. Where, however, meandered lines extend below the line of ordinary high water mark, the disclaimer is applicable which is found in section 2, article 17, of the state constitution, which reads:

"The state of Washington disclaims all title in and claim to all tide swamp and overflowed lands patented by the United States: *Provided*. The same is not impeached for fraud."

This is, in practical effect, a grant to the patentees of the United States of the interest of the state in such lands. This was held in *Scurry vs. Jones*, 4 Wash., 468, and followed in *Cogswell vs. Forrest*, 14 Wash. 3, and in *Kneeland v. Korter*, 40 Wash. 359.

As to those waters which are navigable for interstate commerce and which are therefore within the jurisdiction of congress, a number of statutes have been passed providing for and regulating the erection of wharves, piers, bridges, booms and other structures. These statutes require the presentation of plans to, and approval thereof by, the chief of engineers of the war department followed by the consent of the secretary of war authorizing the maintenance of such structures. The license thus conferred is subject to modification and is revocable at the instance of the war department.

A number of decisions by the federal supreme court of which the latest is that of *Union Bridge Co. vs. United States*, decided last February, fully sustains the power of the secretary of war to require any modification in existing structures in interstate navigable waters. In that case a bridge across the Allegheny river, which prior to its construction, was affirmatively authorized by the secretary of war, and which when constructed did not unreasonably interfere with the navigation of the river, but which partly owing to the increase of commerce, and partly to the natural conditions, had become an unreasonable obstruction to navigation, was held to be subject to modification or removal at the instance of the secretary of war and a fine was imposed in a criminal proceeding for its failure to obey the mandate of the sec-

retary. It was claimed among other things that the act of the secretary was a taking of the property of the Bridge company without compensation and without due process of law. The court reviewed the authorities showing that a denial of or obstruction to access to navigable waters is not an impairment of vested rights; that the owner of lands bounded by navigable waters holds his property subject to the dominant right of public navigation, and that the same rule applied in the case of structures authorized by national, state or municipal authority, the court saying:

"But acts done in the proper exercise of governmental powers, and not directly encroaching upon private property, though their consequences may impair its use, are universally held not to be a taking within the meaning of the constitutional provision. They do not entitle the owner of such property to compensation from the state or its agents, or give him any right of action. This is supported by an immense weight of authority. . . . Moreover, riparian ownership is subject to the obligation to suffer the consequences of the improvement of navigation in the exercise of the dominant right of the government in that regard. The legislative authority for these works consisted simply in an appropriation for their construction, but this was an assertion of a right belonging to the government, to which riparian property was subject, and not of a right to appropriate private property, not burdened with such servitude, to public purposes. In short, the damage resulting from the prosecution of this improvement of a navigable highway for the public good did not result in the taking of appellant's property, and was merely incidental to the exercise of a servitude to which her property had always been subject."

A still later development of this rule is found in the recent case of *Kansas vs. Colorado*, involving the right of the state of Colorado to appropriate for irrigation the waters of the Arkansas river, and which right was disputed by the state of Kansas and by the United States, which intervened in the action. The intervention by the government was based on the theory that it had a superior right to appropriate the waters of the Arkansas river for purposes of irrigation as against the rights of the respective states. This right was denied on the ground that in so far as the states were concerned, the federal government had no power to engage in irrigation projects, neither under the commerce clause in the national constitution nor under the power to make all needful rules and regulations for the disposal of the territories, and thus denied the claim of intervention set up by the government; but, in doing so, attention was called to the fact that each state recognized that the Arkansas river was not navigable for interstate commerce,

and held that the right of the federal government to assert that the river was capable of such navigation and therefore subject to the superior right of the government for use in interstate commerce, would not be decided, but specially reserved. This case is an authority that the right to use navigable waters for the purpose of irrigation is subordinate to the public right of navigation, and illustrates the action taken by the court not to bar the United States from asserting such right.

The license issued by the secretary of war to maintain structures in interstate navigable waters is, as we have seen, subject to modification and revocation. It is a right personal to the licensee, although in practice such structures are frequently conveyed to other persons and the war department has recognized the right of the grantee under the grantor's license. A question which it is believed has not yet been adjudicated, is whether the subsequent issuance of a license to another licensee operates to revoke the license first issued, when the exercise of the first is incompatible with that of the second. This involves the doctrine of an implied revocation of the first license. The point is now pending before the United States supreme court on writ of error to the supreme court of this state. It would seem that under these circumstances, the first license is revoked by implication, and that no right of property for which compensation must be made, has been taken from the first licensee.

But structures in navigable waters require also the assent of the state. This is accomplished by a general act and not by special license. Each of the boom statutes in this state are of this character. By compliance with the provisions of these laws, the right to erect and maintain booms in the navigable waters of the state are granted. Briefly speaking the steps are these: Within three months after filing its articles of incorporation, a boom company must file its plat in the office of the secretary of state, showing so much of the shore lands and waters of the state as are proposed to be appropriated for boom purposes. The act of 1890 does not limit the time within which a boom company must commence operations, but the act of 1895 requires boom and driving companies to enter upon their duties within three months after the filing of the plat.

By the amendments of 1903 and 1905 provision is made for the filing of supplemental plats. There is no express limitation contained in either boom statute upon the amount of area covered by such plat, but each act as construed by the supreme court in the *Samish Boom* case, 32 Wash., page 586, limits the right of condemnation to private property which is reasonably necessary for boom and driving purposes, and

it is a fair implication that the right to select a site by the filing of a plat should be subject to the same restriction. In respect to the condemnation of private rights by boom companies, the act of 1890 provides that if property so condemned shall cease to be used for boom purposes for the period of one year, the same shall revert to the original owner or his assigns, upon repayment of the original cost of condemnation. It is suggestive to note that the act of 1895 omits the requirement respecting repayment of the cost of condemnation, thus facilitating the reversion of private property condemned by boom companies which has ceased to be used. It would appear that this discloses a legislative intent that a boom company cannot acquire property for boom purposes and leave the same idle. Our supreme court, however, has not taken this view of the matter. In *The Nicomen Boom Company vs. North Shore Boom and Driving Co.*, 40 Wash. 315, this subject was under discussion, and the court considered that these provisions were for the benefit only of the original property owner or his assigns.

Further, the court in construing the clause "cease to use for one year," said that since use must precede a ceasing to use, property which had been condemned, yet never used for boom purposes, could not revert to the original owner, since there had never been a commencement to use. Since the legislature has been so careful to provide for the reversion of property acquired by eminent domain, it would appear that unused area covered by a boom plat should be subject to the same restriction. It costs practically nothing to file a plat. The statute contains no express limitation upon the area which may be platted. The plat is merely a notice of an intention to appropriate—the statute says the plat shall show so much of the shore lines and waters of the state as are proposed to be appropriated. Clearly the legal effect of filing the plat is to show the intention of the company to use the area platted. Where this intention is not followed up within a reasonable time by actual use, the servitude or *quasi* lien resulting from the filing of the plat should be deemed abandoned. Certainly since private property when condemned reverts to the original owner upon cessation to use for one year, a like result should follow in favor of the public as to the water areas of the state which originally cost nothing save the expense of filing the plat.

The valuable right of floatage is necessarily accompanied by the use of navigable waters for boom purposes. Very frequently the area suitable for the maintenance of booms is limited by natural conditions. Assuming that there is no implied restriction upon the quantity of water area proposed to be appropriated by the filing of a plat where the

natural conditions are such that all suitable boom area is covered by the plat of the first company, that company should not be permitted to act "the dog in the manger," and prevent competition by using a part only of its platted area and permitting the balance to remain unused. If such a result is legally possible under our boom statutes, then, where natural conditions are favorable, competition can be suppressed or avoided and a practical monopoly established. Neither boom statute purports to grant exclusive rights, and since such grants are strictly construed against the grantee in favor of the public, the reasonable construction should prevail, that only navigable water area, which is reasonably necessary can be impressed for boom structures, and that the question of whether more than a reasonable amount has been platted should be open to question at the suit of the state or any company complying with the boom statutes.

Amid much diversity among the cases, it yet appears that the courts have striven to give effect to the law of equal rights. In this state, by legislation and decision, perhaps more than in any other, the equal right to the use of navigable waters is vouchsafed to all alike. Here private rights of every kind are subordinated to the public right of navigation, and is one of the best illustrations of that rule or law of the equal freedom and equality of right, which is the special genius of our state and nation.

The discussion of this subject has been limited to local and interstate navigation. Beyond and above this, although a part of the same subject, is that of navigation on the high seas—the province of maritime jurisprudence and international law.

Speaking broadly, commerce upon navigable waters fairly typifies the progress of civilization. Painful and slow, oftentimes in fear, were taken the first steps of commercial intercourse between man. As commerce became free and extensive, so grew the arts of civilization. It was a long, often an inglorious struggle. Phœnicia engaged in maritime commerce, and her ships, passing the Pillars of Hercules, ventured into every sea then known. The cities of the Mediterranean, particularly Venice, encouraged trade upon the high seas and kept alive the spirit of liberty, while northern hordes thundered at the gates of Rome. Spain rose to power—her galleons freighted with the wealth of the western world, made her Armadas the terror of the seas. As the Inquisition sapped the resources of the United Netherlands, her ships traded in every quarter of the globe. Hugo Grotius, a prisoner and an exile, wrote his great treatise on maritime and international law, which immediately became a classic. England swept to empire, her vessels plowed all seas—civil liberty came with the ad-

vance of commerce, and ushered in the greatest era which history records.

In retrospect we see Columbus scanning the western horizon for signs of land. We see Balboa planting his country's flag upon the shores of the Pacific. Brave Drake and stout Magellan again circumnavigate the globe. With every step has come commerce, and with it have come art, science and civilization.

"Cheers for all pioneering,
For all are pioneers,
All sailors from an anchorage,
Fronting the unknown years.
For each man sails an ocean
No other sailed before,
And each man findeth for himself
The undiscovered shore."

We, too, have our pioneers. They also "have circled the seas and their islands." Their white sails of peace float wherever man holds commerce with his fellows. By their aid this country has become the first power in the policies of the world. Even now, at the Hague tribunal, our emissaries are proposing an international court of arbitration.

"Where the war drums beat no longer, and the battle flag is furled,
In the parliament of man, the federation of the world."

Community Property Law

By F. T. Post.

It is not my purpose to treat the community property law historically, nor to provide a digest of the decisions of the Supreme Court. My purpose is, however, to point out a few of the most glaring defects in the hope that this association will father much needed legislation.

The community property system seems to be a sort of fetish in this state. The underlying principle is supposed to be marital equality. It is believed by some to be an improvement upon the system worked out under the Anglo-Saxons. It was born in barbaric Spain. It seems remarkable that sane men on the Pacific coast should have ever concluded that a system of laws thus originating would be more beneficial to women and children than a system of laws created by the liberty-loving, fighting Anglo-Saxons. That more evil than good is the result of this system as compared with the laws relating to the same subject matter prevailing elsewhere in this country is the judgment of many students of the subject. But it is here, and like the dandelion and the English sparrow, it is doubtless here to stay. The first duty of the lawyer is to the state. I shall try to demonstrate that it is the duty of this association to father several changes in this system as it now exists.

The supreme court of the territory *vi et armis* annihilated the woman suffrage statute. This has lived. For thirty-eight years the Supreme Court has construed, differentiated and legislated until a creature has been born that looks beautiful to the blind, but it stings like an adder and biteth like a serpent. The fault is not with the Supreme Court, but with the crudities, cruelties and ambiguities of the statute. While this system prevails in a few other states, our statute is *sui generis*. There are none so bad as ours.

While the underlying principle is supposed to be marital equality and protection to widows and children, yet the statute is such that a husband and father may die leaving an immense fortune, and the widow, who was the wife of his bosom and bore him many children, may be left penniless, he bequeathing and devising his entire wealth as he pleases. The entire separate property of the husband is subject to his disposition by will. The rents, issues and profits of the separate property are separate property. Upon his marriage he may have a few thousand dollars, and after marriage may invest that in real estate or

other property and the same may grow into a large fortune. The husband may support his family out of his labors or in some profession or trade or business; there may be no accumulations therefrom. The widow cannot even obtain a homestead in such separate property when the deceased husband left a will. *Eyres Estate*, 7 Washington, 291. The statute gives him absolute power of disposition of the entire fortune by will. Surely this is not an improvement upon the statutory law of the common-law states—the law that prevails among nine-tenths of the people of this nation. Such an outrage as this is only permissible in community property states.

In this state we now have three kinds of property—separate property, community property and partnership property—that is property in which the community has an undivided interest and one of the spouses has another undivided interest as his or her separate estate. We also have three rules prevailing where property is acquired through two forces, one separate, one community. Where funds are commingled in such a way that it is impossible to tell how much are community funds and how much separate funds, then the property acquired is all community property; where funds are commingled in such a way that it is possible to tell how much are community funds and how much separate funds, then the property acquired is partnership property, the community owning that undivided interest therein which the funds furnished by it bear to the whole funds; where property is acquired in part through separate money and in part through the energy, intellect and brains of the community, then such property is the separate property of that spouse who furnished the moneys and the community has no interest therein and no claim thereto. These principles are settled by the statute and the decisions of our supreme court. Do they appeal to one's sense of justice? It is, of course, true, as repeatedly held by our supreme court, that the labor, the energy and brain force of each spouse is the property of the community and all acquisitions made through the same belong to the community. But the logical deduction from *Austin v. Clifford*, 24 Washington, 172, is that the brain force and energy of the husband may be given to himself without compensation. He may have a few thousand dollars as his separate property and may devote time, labor and ability after marriage in investing the same profitably, and the proceeds of such investments, no matter how large, will be his sperarte property. On the other hand, if the wife has a few thousand dollars which she invests in lands, and the same is not quite sufficient to pay for the same and she borrows the balance from a mortgage company, giving her own note and a mortgage upon these lands to secure the same, taking title in herself, and thereafter

pays off the mortgage out of the income from the lands, the lands are not hers as her separate estate, but the community owns that undivided interest therein which the moneys borrowed bears to the whole consideration. Surely it is time for sensible legislation. The early pioneers were doubtless hardy and courageous, but they were not law givers or philosophers.

One of the most ill-considered, unwise and unjust provisions of this system is that requiring, upon the death of the wife, that all community property shall be administered upon in probate, and that one-half thereof, in case of intestacy, shall go to the children. The only escape from the evil effects thereof is by some method of evasion of the law. This has been the cause of repeated legal frauds and conversion of funds. Fathers have been required of necessity to convert their children's property to their own uses. Various lawsuits in the form of actions to quiet title and selling property to dummies have been conceived and carried out through the courts, and decrees have been entered without careful scrutiny into the facts. This statute is baneful and without excuse. No case has ever come under my notice where good results have come therefrom, while numerous cases have come under the attention of every member of the bar where harm has resulted.

The ordinary family has small accumulations; take the farmer; the small merchant; the laborer in our large cities. The wife dies, leaving children. Administration upon the entire family assets is manifestly unnecessary. The business does not stop. The natural head of the family is the father. That condition cannot be changed by legislation. He must go on as before doing the best he can managing his affairs, hampered by the loss of his helpmate. A law which requires his business to stop, to be administered upon through the courts, which takes half of the property and gives it to the children, is little short of criminal. Protection of the children does not require it. Nature has provided a law greater than the law of man. They will be protected through parental love. But when, in rare instances, the father fails to properly care for the children, the state steps in through other and different statutes to protect their rights.

Let us take a few ordinary cases. The wife of a farmer dies leaving small children. The estate consists of a farm, encumbered by a mortgage, live stock, farming utensils and some other personal property. The husband undertakes to comply with the statute. An administrator is appointed; creditors file their claims; the personal property is first sold to pay debts and expenses of administration. If that is found insufficient, then the farm is sold. If found sufficient, then the hus-

band finds himself with an undivided one-half interest in the farm and his children with an undivided one-half interest. If he escapes with the bare farm he will be in great luck. He will be without money to buy other farming utensils, live stock and needed personal property. It will be impossible for him to borrow money. If one child should be of age, a partition of the farm or sale thereof might be required. In any event and under the best circumstances, the law has made him practically a bankrupt, without benefit to the children.

Take the case of a small merchant whose wife dies, leaving children. Ordinarily there would be outstanding obligations, bills payable, money owing to the bank, and funeral expenses. To have an administrator appointed to take possession of the store, pay off all the debts through the sale of personal property as provided by statute, means his financial ruin.

Take the case of Smith & Jones, partners, engaged in the mercantile business. The wife of Jones dies. The result would be serious financial loss to Smith, as well as to Jones, if the law is followed.

It is for the best interest of the commonwealth that every family should own real estate. Titles are rendered uncertain because of these provisions of the law; innocent purchasers of property from the widower, without knowledge of the marriage and death of the wife, have been deprived of their property in many instances. This is particularly true where the widower has married a second time and a conveyance is innocently obtained from both spouses. The common practice is, as to personal property, for the widower to ignore the law, usually ignorant of it, and to convert the children's interest therein to his own use or, perhaps, with knowledge of the law, to go on and do business the same as before, trusting to protection through the honesty of the children. A law which must be evaded and is continually evaded to escape harmful results, is a law that should be repealed.

We have no monopoly of wisdom. It is well to at least consider the rules prevailing elsewhere among the Anglo-Saxons. In Great Britain and in all her colonies, except Quebec, there is no distribution of that class of property, which would be here called community, to children upon the death of the wife. Quebec is half French and it has a system something like ours.

In the United States there is no such division except in Washington and a few other states, notably Texas, Nevada and Idaho. The Idaho law was, however, the same as California until the last session of the legislature.

In Louisiana, the rule seems to be that upon the death of either husband or wife, leaving issue of the marriage, that such issue take

one-half of the community property when the deceased has not disposed of the same by last will or testament, but that in such case the survivor takes in *usufruct* the share of the deceased in the community inherited by such issue. This *usufruct* ceases if the survivor enters into a second marriage.

In California, upon the death of the wife, the entire community property goes to the surviving husband.

In Oregon a modified dower rule prevails. The widow is entitled to one-half part during her natural life of all lands whereof her husband was seized of an estate of inheritance at any time during coverture, unless lawfully barred. She is, of course, barred by joining with her husband in a deed of conveyance. Her right is, however, an inchoate right.

There are, of course, rare cases where a widower has married again and given all or the bulk of his estate to the second wife, either in his lifetime or upon his death, causing complaint, sometimes just, on the part of the children of the first wife. But no law is perfect and no law can protect against every possible contingency. The greatest good to the greatest number is the principle to be considered in all legislation.

The recent decision in *Heintz v. Brown* (decided May 28th), 90 Pac. Rep. 211, and results logically following therefrom merit consideration. It was decided in *Yesler v. Hochstettler*, 4 Wash. 349, that "there can be no doubt that if a married woman, under the Act of 1881, borrows money entirely upon her personal credit, the money and whatever she buys with it, become common property." That doctrine was re-affirmed in *Main vs. Scholl*, 20 Washington 201.

The facts in the case of *Heintz vs. Brown* are, in brief, that the wife purchased a piece of farming land from a railroad company under a five-year contract, making consecutively the first, second and third payments out of her separate moneys, the contract running in her name. After the third payment had been made she arranged with a mortgage company to borrow enough moneys to make the last two payments, giving her personal note and a mortgage upon the property to secure same, the moneys received from the mortgage company going directly to the railroad company. A creditor having a community judgment levied upon the land and the wife brought an action to restrain sale. The Supreme Court held in effect that the community owned an undivided two-fifths interest in the land and the wife an undivided three-fifths interest as her separate property.

The tone of the opinion indicates that the Supreme Court realized the evils resulting from the doctrine, but felt constrained to so hold

by reason of previous decisions and the decisions of other courts.

In investigating this matter, I find two authorities in point not cited either in the opinion of the court or in the brief of counsel. In one of them the facts are in substance the same as in the Heintz case—*Haney vs. Pesoli* (California), 41 Pacific 819, distinguishing *Schuyler vs. Broughton*, cited in the opinion in the Heintz case. The Supreme Court of California, in the *Heney* case, among other things said:

"It is rational to conclude that money borrowed upon the security of the separate real estate of one of the spouses will, in the absence of any showing to the contrary, be treated as the separate property of the party owning such real estate." They held the property to be separate property.

The other case is *Hillen v. Williams* (Texas) 60 Southwestern 997, decided in 1901. The head note is:

"Land purchased by husband before his marriage is his separate property, and if any part of the purchase money is paid with community funds, the community estate is entitled to a reimbursement therefor, which is a charge on the land."

It seems to me there is a manifest distinction between the Heintz case and the authorities cited in the opinion of the court, because of the fact that in the Heintz case the contract, when made, is the separate contract of the wife—its status is then fixed, while in the other class of cases separate moneys and community moneys are commingled at the time of the inception of the contract. When the wife, in the Heintz case entered into a contract with the railroad company to purchase the land and made the payment out of her separate funds, that contract was her separate estate. The fact that some community money was furnished to her towards some subsequent payment could not constitute in itself an assignment of that contract nor of any interest therein by her to the community. The community would obtain thereby no legal title to any interest in the contract, but the community would have a claim against her for the moneys borrowed of the community and might have in equity a charge against the land. It is not, however, my purpose to enter upon a criticism of this decision, but to emphasize the necessity of rational legislation.

Compare the results as between the spouses of the rule adopted in the Heintz case and the Yesler case, with the results of the rules adopted in the Austin case, 24 Washington 172, that the energy, skill and ability of the husband exercised in investing his personal moneys gives the community no rights either at law or in equity against the product. Also illustrated in *Forker vs. Henry*, 21 Washington 235.

in that case a married woman took up a homestead. After she had lived there four years she married and the community of herself and husband continued to reside thereon and prove up. The occupation and cultivation of the land, which was a necessary precedent to obtaining title, was, for one year, performed by the community. It does not appear in the reported case whence came the money from which final payment was made. The Supreme Court says the principle is established that "if either spouse before the marriage has acquired an equitable right to property which is perfected after marriage, the property is separate."

These rules make titles to real estate uncertain and render it extremely hazardous to purchase and improve same. They are likewise an invitation to perjury and fraud. Of course, if one purchases real estate, getting a conveyance from both husband and wife, and neither one of them has theretofore embarked upon the matrimonial sea, the danger so far as they are concerned will be eliminated. But upon the death of either spouse leaving minor children, then titles to all real estate are in a condition almost hopeless. The fact that the community estate goes through probate can render no assistance, because our court has held in *re Alfsted Estate*, 27 Washington 175, and in previous cases there cited, that no determination as to what is community real estate and what is separate real estate can be made in probate. If the administrator should seek to sell or mortgage real estate in course of administration, the purchaser would not be protected except through obtaining a conveyance from the surviving spouse, as well as from the administrator, and then there is apparently no way of determining in the probate court what proportion of the proceeds shall be turned over to the administrator or what proportion taken by the surviving spouse. It is, of course, possible to have this question determined by a suit in equity. In such a suit creditors and infants might be interested. The proof as to the amount of moneys furnished to the estate by the surviving spouse would lie ordinarily wholly within the control of that spouse. This provides a delightful field for fraud. What an opportunity to establish large interests for the separate estate of the survivor as against the community creditors and, too, against the heirs of the deceased! Purchasing real estate that has passed through the probate court has ever been an undertaking extremely hazardous. But this danger has, I think, never been thoroughly appreciated by the bar.

If one has a judgment which may be a lien upon the community property and levies upon real estate that, according to the records, was obtained after marriage, and causes same to be sold at public

auction, the purchaser would buy at his peril. There is no reason why the wife might not after sale bring an action in ejectment as well as an action for an injunction before sale. The proof would be entirely within the control of the husband and wife. With a full appreciation of the logical results of these decisions judgments against the husband alone, although they recite that the same are upon a community debt, are not valuable as against real estate. It is possible for the judgment creditor after levy to bring an action against the husband and wife to determine the extent of the lien, but being without evidence the procedure would be hopeless.

The rule referred to is unjust to creditors in other respects. For example: It is settled in *Elliott vs. Hawley*, 34 Washington 585, and in a case decided July 10th, *Brookman vs. Durkee*, 90 Pac. Rep. 914, that if a family comes into our midst from a common law state, bringing moneys acquired after marriage, that such moneys are the separate property of the husband and, therefore, the property purchased with such moneys must be his separate property. It is also settled in *La Selle vs. Woolery*, 14 Wash. 70, that no lien can be established upon community property under a judgment obtained upon a debt created in a common law state by the husband while there residing.

Now, suppose that John Smith, a married man, residing in the state of New York, converts into money property there acquired after marriage, realizing, say, ten thousand dollars, and at once comes to this state to reside. He leaves behind him large obligations. He invests his moneys in real estate here. That real estate is his separate property. Shortly thereafter he borrows ten thousand dollars of his father-in-law, giving his note and mortgage upon this real estate to secure the same. That money is, under these decisions, community money; with that money he buys another piece of real estate, and that real estate becomes, therefore, community property. Thereafter his creditors follow him to this state, obtain judgment and seek to enforce the same. What can they get? Manifestly nothing. They can levy upon the first piece of real estate, but that is mortgaged for all it is worth. They cannot levy upon the second piece of real estate because that is community property.

Another question often mooted is whether or not it is for the best interest of the commonwealth that community property shall be conveyed only by the husband and wife joining in the same instrument. This statute has been the cause of some evil resulting in an attempt at modification which is incomplete and unsatisfactory. Looking again to the common law, we find that there the wife is not barred of her dower interest, except by conveyance, but that in some of the eastern

states at least the innocent purchaser is protected to a certain extent. If the grantor husband should die, leaving a widow, and she should make a claim to the land conveyed by the husband alone, the purchaser may have her dower interest in this land appraised and settle the same for a cash consideration. Thus the widow is protected and thus the innocent purchaser is protected in part.

In California, the husband has the entire management with absolute power of disposition, other than testamentary, of the community property, except homestead or property upon which they reside, and also except that he cannot dispose of it with a view of defrauding the wife of her interest therein, and cannot make a gift of the property or convey the same without a valuable consideration, unless the wife in writing consents thereto. Such also was the law of Idaho until recently.

In Texas, the husband has absolute power of disposition of all the community real estate without the consent of the wife, and such is also the law in Nevada and in Louisiana and in the Province of Quebec and apparently also in Spain and France.

The hardship of the old statute of this state caused legislation in the form of judicial construction in the case of *Saddler vs. Niesz*, 5 Washington 182. The principle of estoppel was invoked against the wife because she did not follow her husband when he left home. It was a case of great hardship to an innocent purchaser. This was the cause of the enactment of a statute which undertakes to protect innocent purchasers who take deeds from men without knowledge of their marriage. The act is unsatisfactory. The fact whether or not the purchaser has been put upon notice is a fact open for litigation rendering titles almost as uncertain as before. The act affords no protection when the wife has died leaving children and the purchaser takes a deed from the father without knowledge or notice thereof.

In conclusion, I suggest as a method of lessening most of the evils, the following statutory modifications:

First. Adopt the California statute as to descent and distribution of community property. Add to it, if you please, a provision similar to the one existing in Louisiana that if the surviving husband shall remarry he shall be treated as trustee for the issue of the first marriage, share and share alike as to one-half of the community property, the father, however, to have absolute power of management, sale and investment during his life time, except that each child, upon majority, shall be entitled to an accounting for and the recovery of his share or interest, the father to have credit for cost of support and education.

Second. Adopt the statute of California as to conveyances of com-

munity property. Add thereto, if you please, a provision to cover those cases where the wife is unwilling to trust the husband in the management and disposition of the community property to the effect that she may file a declaration in writing with the county auditor revoking his power of conveyance of all community real estate or some specific community real estate without her joining in such conveyance.

Third. Provide that the rents, issues and profits of separate property shall be community property, adopting in substance the rule that prevails generally elsewhere in community property states.

Fourth. Provide that upon the death of the husband the surviving widow shall take one-third of the separate property of the deceased.

Fifth. Provide that where separate funds and community funds are commingled in the purchase of property, real or personal, that the same shall in all cases be community property. Provide, however, that when the consideration consists wholly of separate funds or moneys furnished by one of the spouses and moneys borrowed by that spouse upon his or her individual note or mortgage upon separate property, that the property purchased shall be separate property.

Sixth. Provide that the superior court shall have jurisdiction in probate to determine the rights and interests, community and separate, in all property.

Seventh. Provide that community property, real and personal, may be subjected to the lien of judgments obtained upon debts contracted in another state when the debtors there resided to the same extent as if the debt had been contracted in this state and the debtors resided here.

'Tide and Shore Lands

By H. G. Rowland.)

Tide lands are defined by the statutes of the state of Washington as "all lands over which the tide ebbs and flows from the line of ordinary high tide to the line of mean low tide, except in front of a wharf where higher lines have been established, or may hereafter be established, where such tide lands shall be those lying between the line of ordinary high tide and the inner harbor line, excepting oyster lands."

Shore lands are defined as "lands bordering on the shores of navigable rivers and lakes below the line of ordinary high water and above the line of mean low tide."

In order to properly understand the decisions of our own state and our own constitution and laws which refer to our tide and shore lands, it is necessary to go back into the early history of our country and still further into the time of the Stuart kings and their predecessors in England.

We are at once confronted with the vast amount of law and authority upon this subject, and we find an irreconcilable conflict between the facts and the theory of the law.

The theory of the law was that the title to the shore lands and the tide lands was in the king, whose title extended as far as the tide flowed.

The fact was that throughout England the shores, for the most part, of the navigable waters were actually owned by the proprietors of the land along the shore.

The reason for this conflict between the facts and the law is that the theory of tide lands was formulated after the titles had become settled and its principal effect was to unsettle rights which had been established for centuries.

It is difficult for the ordinary observer to see any distinction between a strip of land upon which the tide regularly rests during certain hours of the day, and that immediately adjoining, to which the tide never rises. In early times no such distinction was made, and water in England a matter which bordered on the sea was granted as a part of the land. It was assumed by all parties that no land was reserved between the upland and the waters.

It was the universal law of England until about the time of the reign of Queen Elizabeth when a Mr. Digges, who made a claim to

pection as to the extent of the king's rights, promulgated the theory that *prima facie* the title of the king went as far as the tide went, and consequently included a strip of shore all around the kingdom.

The Stuart kings were very quick to avail themselves of this theory, as it suggested to them a source of unlimited revenue by disposing of a strip of land thousands of miles in extent which in many cases had become very valuable. The kings were in the position to largely increase the revenues of the exchequer.

This theory would have proved very valuable to the Stuart kings, had it not been for the fact that they were in very bad repute with parliament, which would not consent to any increase of the king's prerogative, and the attempt to control the shore line of England by Charles I. was one of the causes of his deposition.

If we go back earlier than the Stuart kings, we will find that there is no evidence of any distinction between lands above, and those below the flow of the tide. All grants of the Saxon kings extended to the shore of the sea, to the mid-stream of non-tidal rivers, and in the case of tidal rivers, *inter fauces terre*, also to the mid-stream.

The shore was considered as a part of the manor. The Domesday Book makes no attempt to classify tide and shore lands as a separate estate.

The royal grants of the Norman kings included fore-shore as a parcel of the adjoining manors without actually specifying it.

One of the earliest cases containing the most definite evidence as to the legal title of the shore is afforded by the remarks of Chief Justice Choke, in *Edward V.*, pl. 30. In discussing the right of fishermen to dig in the shore, he says: "If I had land adjoining the sea, where the sea ebbs and flows over the land, when it flows everyone may fish in the waters which has flowed on my land, for then it is a parcel of the sea and in the sea everyone may fish of common right; but when the sea has ebbed, then in the land which was before flowed by it he must justify his digging in this land as not much advantage to me."

In this case there is no hint that the fore-shore was the property of the public, but it seems for the first time to question that it was a parcel of the adjoining manor and belonged to the riparian owner.

As stated, it was not until the reign of Queen Elizabeth that the title of the adjoining manor to the fore-shore was seriously questioned, when Mr. Digges, in his work entitled "Briefs of the Queen's Interest in the Land Left by the Sea, and the Sea-shores Thereof," for the first time laid down the theory that the king owned a separate estate in the tide and shore lands, which was an estate entirely independent of that which existed in the upland of the adjacent manor.

The attempt to foist this doctrine upon the English people was fiercely resisted, and the specific remonstrance against Charles I. was "the taking away of men's rights under color of the king's title to land below high and low water mark."

In the case of *Johnson v. Barrett*, Lord Hale very strongly contended that the title was *prima facie* in the king, but he was defeated in this contention, and the court held that the title to the king stopped at low water and did not go above it.

Even as late as 1850, with very few exceptions, in England the riparian owner had established his title to the shore against the most strenuous attempts on the part of the crown to recover portions of it.

The foundation of the state's title to the sea shore, says Mr. Farnham in his work upon Waters, is of such a character that it should not be extended any further than it is absolutely necessary, and that the doctrine of the *prima facie* title in the crown was invented for the sole purpose of giving to the crown a standing in court, by which it might succeed in getting possession of some portion of the sea shore through the inability of the nominal owners to establish their title.

Strange as it may seem, that notwithstanding the fact that all English history is against the theory that the title to the tide and shore lands was *prima facie* in the crown, which theory had no existence whatever prior to the time of Queen Elizabeth; and notwithstanding that the treatise of Mr. Digges, was a theory only, with neither legislation nor judicial precedent to sustain it, yet this doctrine that the title to the shores of tidal water as *prima facie* in the crown, has become firmly established, which places upon the one who claims the title the burden of showing his title.

Since this power has been taken from the king, it is now vested in parliament, but as the sea coast of England is for the most part in private ownership, and as there is no constitution in England beyond public sentiment, we find that there is an irreconcilable conflict between the theory and the facts.

In theory the title is in parliament, while in fact it is generally in the abutting owner. But the theory has become warped in many instances by judicial opinion, which has resulted in depriving the abutting owner of what is justly his own.

The American colonies were established, and received their charters, at about the time when the doctrine of the *prima facie* right of the crown to the tide and shore lands was being advanced.

The charters which were granted to sections of land in the new found world by the sovereigns of England, invested the grantees with all the rights of the crown. They held the title under no trust except

that navigation rights should not be disturbed, and their grantees took like rights.

In Massachusetts the colonists, and later the legislature, proceeded to extend the right of the riparian owner to low water mark by express legislation, and provided for the division of the flats in the beds of tidal streams.

This law was afterwards annulled, but from its passage there grew up a usage which obtained the force of law, to the effect that the owner of the land bounded on high water should hold to low water mark. This is now the common law of the state of Maine, but is not sustained in New Hampshire.

The public, however, reserved the right to pass over in flat boats, and it was subject to such limitations as other real estate is subject to for the security of other properties and of the public in the enjoyment of their rights.

In New York the colonial governors made grants to the city of New York which extended from high water mark to four hundred feet below low water mark around the entire island.

These grants were subsequently recognized by the legislature of the state, and the city is enjoying the benefit of them at the present time.

In Maryland the rights to the tide and shore lands were granted to the lord proprietor, and he had full power to dispose of the soil.

One of the earliest cases in the United States is that of *Martin v. Waddell*. The decision was rendered by Chief Justice Taney of the United States supreme court. This decision holds that the grant of King Charles to his brother, the Duke of York, to tide lands which are now included in the state of New Jersey, did not convey the private interest of the king, but his prerogative or governmental interest.

This has been considered by many an unfortunate decision, for the influence which it has had upon the subsequent decisions of the country. It has been criticised for making a distinction between the grants of uplands and the grants of tide lands. They both having come from the same source, it is difficult to see why one grant should pass a private title, and the other merely a governmental title.

The effect of this decision has been to over-rule all the common law doctrines, and annul many grants which had been made in good faith, and to upset titles, which, as judged by the common law in force at the time were good.

The position taken by the American courts to a great extent, is that the title to the tide and shore lands is vested *prima facie* in the government, and arises directly as a result of the discussion which was going on in England at the time of the colonial grants.

Briefly, it may be said that in this country there are three classes of property existing in connection with that flowed by tidal water. First the dry upland. This it is always the policy of the state to place in private ownership.

Second, the ground below low water mark. This might be placed in private ownership, but it was not the policy of the state to do so except under special circumstances.

Third, the property between high and low water mark. This it has been the early policy to treat as a parcel of the adjoining upland, but by a change of law with reference to it, it has become a class which would not pass by private grant of the adjoining upland, but might be granted as a separate estate to an owner other than the owner of the upland.

Generally speaking our states have considered it a matter of public policy to grant it to the owner of the upland.

This latter property, however, is always subject to the paramount purposes of navigation, and the owner could do nothing which might interfere with these rights.

Another reason exists why it would have been better to have placed the tide and shore lands in the possession of the adjoining upland owner. Commerce demands shipping facilities, such as wharves and docks, and protection against the fury of the sea. No one has such an interest in constructing and maintaining these works as the riparian owner.

In case the title to the tide and shore lands does not pass with the upland, a separate estate is frequently created in a narrow strip of land, which the purchaser of the abutting property had reason to think he was acquiring, for which he is afterwards required to make extra compensation, to the emolument of the state.

Farnham, in speaking of this practice, says, that it should be beneath the dignity of a free and independent people; that the attempt to enforce such a doctrine was one of the grounds for depriving Charles I. of his crown, and no citizen, after in good faith purchasing lands which he has every reason to believe extends to the water, can be deprived of it and have as much regard for his country after it has stepped in and required him to pay an additional compensation therefor.

But the theory that the title to tide and shore lands was *prima facie* in the people had become so firmly established when the governments in this country were established, that it may be said that the states took title to all the fore-shore which had been granted to the crown.

This land they could dispose of as they could the other land which came to them. They might ordain, as did Massachusetts, that the grant

of the upland would pass title to low water mark, or they might expressly provide, as did the state of Washington, that the title to the tide and shore land should remain in the public until expressly disposed of.

The theory that the title to tide and shore lands was *prima facie* in the crown, in the parliament, or in the people, as the case might be, is almost entirely the result of local discussion and local decisions. A majority of the courts hold that the shore did not pass with the grant of the upland, and that the maintenance of structures in the water, in the absence of public grant, is by sufferance, and not by right.

This brief outline of the history of tide lands and their origin, brings us down to a consideration of their status in the state of Washington, and we shall endeavor to define as far as possible the position of our state in regard to this peculiar class of property, and to see, if possible, how far it conforms to the recognized authority in other states, and the rules of ordinary common sense.

The provisions of the state constitution referring to the subject of tide lands are as follows:

Section 1, of article 17, provides that the state of Washington asserts its ownership to the beds and shores of all navigable waters in the state, up to and including the line of ordinary high tide in waters where the tide ebbs and flows, and up to and including the line of ordinary high waters within the banks of all navigable rivers and lakes: *Provided*, That this section shall not be construed so as to deprive any person from asserting his claim to vested rights in the courts of the state.

Section 2, of article 17, provides that the state of Washington disclaims all title in and to all tide, swamp and overflowed lands patented by the United State, provided that the same is not impeached for fraud.

With fifteen hundred miles of shore line bordering upon Puget Sound alone, and with a large shore line bordering upon the ocean, the Columbia river and inland bodies, a vast amount of swamp and overflowed land among the lakes of the state, the question of the disposition of the tide and shore lands becomes one of paramount interest to the citizens.

Soon after the passage of the enabling act, and the admission of the state to the Union, the question of the rights of those owning land abutting upon tide lands, to such tide lands, was called to the attention of the legislature and to the courts, and the early legislatures of the state, in their wisdom, endeavored to pass such legislation as would deal equitably with those who claimed the paramount title in the tide and shore lands.

Title to such tide lands as were included within the calls of the

patents which were issued prior to the admission of the state to the Union, having been expressly relinquished by the state, accrued to the benefit of the patentees. In making the original surveys it was naturally supposed that the meander line should go to the line of mean high water, but in many instances such was not the case, and for a long time it was questionable just exactly what was the effect of the state of Washington disclaiming title to these patented lands. But the question has been decided so frequently by the supreme court of the State of Washington, that it is no longer an open question, and it is established law at the present time that the state of Washington has no interest above the meander line in lands patented prior to the adoption of the state constitution.

This provision has been sustained in the case of *Denny v. N. P. Ry.* 19 Wash., 298, and *Scurry v. Jones*, 4 Wash., 468; *Cogswell v. Forrest*, 14 Wash., 3; *Washougal, etc. Trans. Co. v. Dalles, etc. Nav. Co.*, 27 Wash., 490; *Johnson v. Brown*, 33 Wash., 588; *Jones v. Calvert*, 73 Pac. 701.

In the case of *Cogswell v. Forrest*, the court held that under the disclaimer of title to tide lands in the constitution, the state could assert no title to patented tide lands, however, lying below the line of ordinary high tide.

And in the case of *Jones v. Calvert*, that title to tide lands covered by such patents passed to the grantees of the patents, as fully as it would had there been express grants in the constitution.

The history as to how this disclaimer happened to be in the constitution is an interesting one. When the constitutional convention met, it was generally conceded that the state should retain title to all tide lands, in order that it might not be handicapped in encouraging commerce and navigation, and in the building up of wharves and structures along the shore line of the commonwealth. The old pioneer, however, who had settled upon the Sound shore, or upon the shore of navigable waters, did not take kindly to having a portion of land which he had heretofore considered his, taken from him by legislative enactment. Protesting against this, the pioneers besieged the legislature and the constitutional convention, and compelled a recognition of their rights, with the result that the state of Washington disclaimed all title to lands patented prior to the adoption of the state constitution.

It has taken legislation and a long line of decisions to properly define the status of these lands and the relation of the state thereto.

In the first place, valuable improvements had been erected in good faith by those who supposed that they had title to such lands, and the first legislatures protected such owners of improvements as had

placed them upon the tide lands prior to March 26th, 1890, if such improvements were in actual use at that date for commerce, trade or business.

The rights of the riparian owner also came up for consideration by the legislature, and in order to protect his rights the legislature granted to the owner of the upland, a prior right to purchase within sixty days after filing of the original appraisement by the board of state land commissioners.

It was generally conceded at the time of the disclaimer by the state to lands patented prior to the adoption of the constitution, that this provision only referred to those lands as to which patents had actually issued. In other words, this provision of the constitution was largely for the benefit of the old donation land claimants, who had settled along the shores of Puget Sound, or the shores of navigable lakes or rivers, but recently our court has extended this doctrine, and held that it applies not only to lands which had been patented prior to the adoption of the state constitution, but that it extended likewise to lands which might have been patented prior to the adoption of the state constitution; that it extended to railroad land grants. This decision has been severely criticised by many, and was rendered by a majority of the court only.

In passing over the subject of tide lands, one is attracted not only by the decisions which have heretofore been rendered in reference to such lands, but he cannot help but speculate as to the future of these lands.

For instance, according to our state laws, the state of Washington has a right to sell and dispose of all tide lands, and give a good fee simple title to the purchaser. In fact this has been the general view taken of such titles. The purchaser of such tide lands may erect a wharf or a dock, or a building which will entirely cut off the upland from the water.

Furthermore, the state may lease to the owner of such tide lands, or to any other person, the harbor area which extends from the tide lands to deep water, and it becomes consequently a matter of public interest, to know whether or not the grant of such tide lands and the lease of such harbor area is not subject to the paramount rights of the public in the navigable waters of the state.

The only safeguard provided is that contained in the act of 1897, which provides for the lease of harbor areas. This reserves to the state of Washington the right to regulate the rates of wharfage, dockage and other tolls to be imposed by the lessee upon commerce for any of the purposes for which said harbor area may be leased, and the

that of ~~the~~ ~~harbor~~ ~~area~~ discrimination and exclusive privileges.

~~Some of the~~ ~~sections~~ ~~of~~ ~~our~~ ~~code~~ ~~pertaining~~ ~~to~~ ~~the~~ ~~sale~~ ~~disposition~~ ~~of~~ ~~the~~ ~~state~~ ~~lands~~ ~~has~~ ~~been~~ ~~so~~ ~~grossly~~ ~~abused~~ ~~as~~ ~~that~~ ~~provid-~~ ~~ing~~ ~~for~~ ~~the~~ ~~use~~ ~~of~~ ~~the~~ ~~harbor~~ ~~area~~. Saw mills have constructed their mills at the very edge of deep water; warehouse companies have likewise done so. The harbor area has become monopolized by private interests. ~~As~~ ~~far~~ ~~as~~ ~~we~~ ~~know~~ ~~the~~ ~~state~~ ~~has~~ ~~never~~ ~~done~~ ~~anything~~ ~~to~~ ~~prevent~~ ~~such~~ ~~discrimination~~ ~~or~~ ~~exclusive~~ ~~privileges~~ ~~in~~ ~~the~~ ~~harbor~~ ~~area~~.

~~It~~ ~~is~~ ~~proposed~~ ~~to~~ ~~lease~~ ~~the~~ ~~harbor~~ ~~area~~ ~~to~~ ~~a~~ ~~saw~~ ~~mill~~ ~~company~~ ~~for~~ ~~the~~ ~~purpose~~ ~~of~~ ~~constructing~~ ~~thereon~~ ~~a~~ ~~private~~ ~~dock~~ ~~is~~ ~~for~~ ~~the~~ ~~benefit~~ ~~of~~ ~~the~~ ~~state~~.

It may be that the legislature and the state land commission ~~are~~ ~~the~~ ~~means~~ ~~whereby~~ ~~the~~ ~~harbor~~ ~~area~~ ~~may~~ ~~be~~ ~~reserved~~ ~~for~~ ~~the~~ ~~benefit~~ ~~of~~ ~~navigation~~ ~~and~~ ~~commerce~~, as our constitution and laws evidently intended.

The ~~harbor~~ ~~area~~ ~~is~~ ~~governed~~ ~~by~~ ~~the~~ ~~laws~~ ~~of~~ ~~the~~ ~~state~~ ~~of~~ ~~Washington~~, and ~~the~~ ~~supremacy~~ ~~of~~ ~~the~~ ~~supreme~~ ~~court~~ ~~of~~ ~~the~~ ~~state~~, carried to its ~~fullest~~ ~~effect~~ ~~will~~ ~~be~~ ~~for~~ ~~the~~ ~~benefit~~ ~~of~~ ~~the~~ ~~people~~ ~~of~~ ~~the~~ ~~state~~ ~~at~~ ~~the~~ ~~absolute~~ ~~expense~~ ~~of~~ ~~the~~ ~~state~~ ~~corporations~~ ~~of~~ ~~the~~ ~~state~~; would deprive ~~the~~ ~~state~~ ~~of~~ ~~its~~ ~~harbor~~ ~~waters~~ ~~and~~ ~~of~~ ~~the~~ ~~docks~~ ~~constructed~~ ~~thereon~~ ~~and~~ ~~of~~ ~~the~~ ~~inland~~ ~~navigable~~ ~~waters~~ ~~of~~ ~~the~~ ~~state~~ ~~private~~ ~~property~~ ~~of~~ ~~the~~ ~~state~~.

We ~~see~~ ~~the~~ ~~harbor~~ ~~area~~ ~~of~~ ~~water~~ ~~front~~ ~~improved~~ ~~by~~ ~~the~~ ~~great~~ ~~railroad~~ ~~company~~ ~~is~~ ~~the~~ ~~property~~ ~~of~~ ~~the~~ ~~state~~. We see the general public ~~expending~~ ~~money~~ ~~for~~ ~~the~~ ~~state~~. We see ~~the~~ ~~state~~ ~~companies~~ ~~refused~~ ~~the~~ ~~right~~ ~~to~~ ~~land~~ ~~on~~ ~~the~~ ~~harbor~~ ~~area~~ ~~owned~~ ~~by~~ ~~the~~ ~~owners~~ ~~of~~ ~~the~~ ~~tide~~ ~~lands~~. We see ~~great~~ ~~wealth~~ ~~being~~ ~~lost~~ ~~from~~ ~~the~~ ~~state~~ ~~reaching~~ ~~almost~~ ~~to~~ ~~deep~~ ~~water~~ ~~and~~ ~~the~~ ~~fisheries~~ ~~of~~ ~~the~~ ~~state~~ ~~within~~ ~~the~~ ~~harbor~~ ~~area~~.

The ~~harbor~~ ~~area~~ ~~of~~ ~~the~~ ~~state~~ ~~are~~ ~~a~~ ~~great~~ ~~source~~ ~~of~~ ~~public~~ ~~wealth~~ ~~and~~ ~~are~~ ~~well~~ ~~guarded~~ ~~for~~ ~~and~~ ~~properly~~ ~~guarded~~ ~~would~~ ~~be~~ ~~a~~ ~~source~~ ~~of~~ ~~wealth~~ ~~for~~ ~~the~~ ~~people~~ ~~for~~ ~~all~~ ~~time~~ ~~to~~ ~~come~~. The ~~harbor~~ ~~area~~ ~~is~~ ~~not~~ ~~to~~ ~~a~~ ~~great~~ ~~extent~~ ~~comprehended~~ ~~under~~ ~~the~~ ~~provision~~ ~~for~~ ~~the~~ ~~Alaska-Yukon-Pacific~~ ~~Exposition~~ ~~for~~ ~~the~~ ~~state~~ ~~of~~ ~~Washington~~ ~~to~~ ~~pay~~ ~~seven~~ ~~hundred~~ ~~thousand~~ ~~dollars~~, by the ~~sale~~ ~~of~~ ~~the~~ ~~harbor~~ ~~area~~ ~~of~~ ~~the~~ ~~state~~ ~~of~~ ~~Washington~~.

The ~~harbor~~ ~~area~~ ~~of~~ ~~some~~ ~~of~~ ~~our~~ ~~cities~~ ~~are~~ ~~of~~ ~~as~~ ~~great~~ ~~value~~ ~~as~~ ~~the~~ ~~business~~ ~~part~~ ~~of~~ ~~such~~ ~~cities~~. In many ~~of~~ ~~the~~ ~~cities~~ ~~the~~ ~~harbor~~ ~~area~~ ~~has~~ ~~passed~~ ~~into~~ ~~the~~ ~~hands~~ ~~of~~ ~~railroad~~ ~~companies~~ ~~for~~ ~~a~~ ~~mere~~ ~~nominal~~ ~~value~~.

We ~~see~~ ~~that~~ ~~the~~ ~~time~~ ~~will~~ ~~come~~ ~~when~~ ~~the~~ ~~people~~ ~~of~~ ~~the~~ ~~state~~ ~~will~~

rise in their might, and insist upon the proper protection of the rights of the general public in the water fronts of their cities and in the miles of shore line.

Personally, we believe, in a great measure, in the private ownership of tide and shore lands, but also we believe that such private ownership should be subject to the paramount rights of navigation, and the paramount rights of the public therein.

To illustrate, if the Northern Pacific Railway Company constructs a wharf upon its tide lands, we believe that such wharf, or dock, should not be for the use of the Northern Pacific Railway Company alone, but should be equally, under proper regulation, for the use of the general public. And we believe that this view will be taken of the matter if a test case is ever made before the supreme court of the United States.

At the time that the lands were granted to the state of Washington they were subject to the paramount right of the public for the purposes of navigation and commerce, and we are unable to see how a grant made by the United States to the state of Washington could have any further efficacy, or convey any greater right, than the general government possessed in such lands at the time of the grant; the adoption of this rule will not work any hardship upon the corporation claiming ownership of the tide lands, for anyone who uses a dock constructed by a private corporation, should be required to pay a reasonable sum for the use thereof.

We believe that the harbor area should not be leased at all, but should be held by the state solely for the purpose of navigation. Limited areas might be leased, but in every instance it should be done in such a way as to protect the rights of the public and prevent the abutting tide lands and the abutting upland from being cut off from deep water.

The sale of the tide and shore lands independent of the upland has been a source of great hardship and wrong to the citizens of the state of Washington. Many speculators have purchased a small strip of tide lands adjacent to the upland, for the sole and only purpose of holding up the owner of the upland and extorting blood money from him. They have had no use for the narrow strip of tide land, which they have purchased, and are deserving of being classified along with the highwayman and the robber, who holds his gun at the head of his victim, and in this manner extorts from him all of his earthly belongings.

The sale and disposal of second class tide lands by the state of Washington has been almost solely in the interest of the speculator and the "grafter."

The matter could have been easily remedied by requiring a notice to be served personally upon the upland owner when the sale of such tide land was to be made, and give him an opportunity to be present and bid at such sales, but as it is, a notice is given by publication, the publication is made in some obscure newspaper, and the upland owner loses what he has heretofore regarded as his own. In many instances he has purchased his land from the government with the idea that it bordered upon the navigable waters of the state. After clearing for himself a few acres in the midst of the wilderness, he suddenly becomes aware of the fact that the government has encouraged a speculator to buy a small strip of land in front of him, and cut him off from the body of water which he has regarded as one of his chief assets.

The public land granted to the state of Washington by the United States for public purposes was a vast inheritance. Had the school land been properly preserved it would have sustained and supported all the common schools of the state without the aid of general taxation.

Had the University land been preserved and handled as private property was handled, it would have given to this great institution an endowment beyond compare.

Had the tide and shore lands, including the shore lands along navigable rivers and lakes, been preserved and leased, it would have produced a source of revenue to the state which would have permitted it to have constructed magnificent docks along the water front of all of our great cities, provided a system of light houses and protection to navigation second to none in the world, and made the great inlet of Puget Sound perhaps the greatest roadstead in the world, which would rank with that of the Mersey or the Clyde. But the policy of the state to surrender this valuable inheritance to private corporations and private greed, has retarded the development of the state to an extent that can scarcely be appreciated.

But it is not too late even yet to protect the rights of the public in what is remaining of the water front and tide lands of the commonwealth. Legislation should be enacted which will insure to every citizen of the state the right to use for the purposes of trade and commerce any portion of the vast water front of the state of Washington, whether the same be held by the public or by private individuals, by paying a rental which will be commensurate to the use of the improvements which the private corporation or individual may have erected upon the tide lands, and the future legislatures of the state will be derelict in their duties if legislation of this character is not enacted. Every port on Puget Sound should be free to the merchant marine of the world, to the private ship owner as well as to the railroad company.

The short-sighted policy of our state in dealing with the fisheries of the state, and granting the right to construct great traps upon the tide flats, which absolutely obstruct the run of salmon, will, in a few years, deprive the state of one of its principal sources of revenue.

In conclusion the following principles pertaining to tide and shore lands may be said now to be firmly established as the law of this state.

First. The title to tide lands and shore lands is in the state, which has the sole power of disposition, save and except as to such lands as were patented prior to the adoption of the state constitution. As to such lands, the title of the upland owner extends to the meander line, when the meander line runs below the line of ordinary high water mark, and to the line of ordinary high water mark where the meander line is above such ordinary high water mark.

Second. The state being the owner of tide lands, subject only to authority of congress to regulate navigation, an improver has no estate in such tide lands and can obtain none therein except by complying with the law regulating such purchase.

Third. Where an improver is granted the right to purchase tide lands which were used for the purposes of commerce, trade, residence or business prior to March 26th, 1890, such right extends only to such lands as are actually improved, and in this respect is similar to that of any person holding title by prescription.

Fourth. The upland owner has no estate below high water, excepting in lands patented prior to the adoption of the constitution, and his occupation is under a mere license, and to acquire any right in such tide lands he must comply with the law as to purchase, and having once complied with such law, his rights become vested.

The great and important question which has not as yet been decided in reference to tide and shore lands of the state of Washington, is whether or not the constitution of the state of Washington pertaining thereto is in conflict with the fourteenth amendment of the constitution of the United States, which provides that no state shall deprive any person of life, liberty or property with due process of law.

Many have considered that article seventeen of the state constitution, in which the state of Washington asserts its ownership to the beds and shores of all navigable waters in the state, up to and including the line of ordinary high tide in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes, is in conflict with the fourteenth amendment of the constitution of the United States; that the theory that the title to tide and shore lands is *prima facie* in the government, is not founded in reason or common sense, and that when a

case is properly presented to the supreme court of the United States the decisions of our supreme court upon this subject will be reversed, and the upland owner held to be the only person who can acquire any interest in and to the tide and shore lands.

We understand that the cases recently started in reference to shore lands on Lake Union, will probably be carried to the court of last resort and settle this question.

Personally, however, we believe that the decisions of our own court are in accord with the modern rulings and decisions, and that an owner of tide land purchased from the state need have no fear of the security of his title, although we believe that ultimately it will be held that the conveyance of all tide and shore land, as well as harbor areas, must be and is subject to the paramount rights of the government therein for the purposes of navigation and commerce.

The Lawyer as a Conservative

By JAMES F. AILSHIE.

Mr. President and Gentlemen of the Bar Association:

When I recall the great number of Washington attorneys who are also members of the Idaho bar and who practice in our courts, when I remember, too, that Spokane periodically assures us that a part of our territory should be severed to help form a new state, with the incidental effect of making that Idaho city on the Washington side its capital, I am persuaded that even here in this thriving metropolis I am still among neighbors and acquaintances. The fact that I cast my first vote in your then territory for that late distinguished citizen of yours who so ably represented you, first as delegate to congress, later as United States senator, and who was so long a grace and honor to your bar, and that at the same time and in a small way I was myself trying to instruct some of your country boys and girls for the larger duties they have since assumed—all this gives me an added sense of kinship and common interest with you.

The nineteen years which have passed since I first became acquainted with you have wrought wonderful changes on this western border of your prosperous and magnificent empire. But while you are wooing the mermaids and dispatching the argosies of an opulent commerce to every quarter of the globe, we of Idaho will not be slow to remind you that among your richest cargoes is to be found much that grew upon our fertile plains, or fed on our countless hills and illimitable ranges, or was wrung by labor's brawny arm from the hidden storehouses of our mineral wealth.

And so I bring to you greetings from both bench and bar of a sister state, where patriotism and love of fair play, justice and the orderly discharge of duty are common household virtues, where peace and contentment are the prevailing conditions of a prosperous and happy people. While certain untoward circumstances of civil and political life have of late given our state an unwelcome notoriety, we are, however, meeting and trying to solve the accompanying difficulties and problems in a spirit of candor and fairness, with a deliberate and honest purpose, which we hope and confidently believe will commend us to the continued regard of our sister commonwealths.

But before I proceed further, allow me to acknowledge the pleas-

ure it affords me to meet you here today. It is indeed a privilege to be accorded the opportunity of addressing a bar association of this great empire state of the Northwest. When we remember amid what trial and law and order was established, with what difficulties its supremacy was maintained in this Northwest territory, and how at times since the days of McLaughlin and Abernathy it required the supremest effort of the bravest and best to ensure protection to life and property, you will then perhaps pardon me for undertaking in a desultory way to discuss the influence of our profession in the state and upon its government and institutions. I may say in the outset that I do not propose to indulge in any indiscriminate laudation. Nothing is more wholesome than honest criticism, and when the lawyer as a class or as a profession deserves criticism, it should be given and received in a spirit of fairness and frankness. It occurs to me that one of the most valuable features of our bar associations is the opportunity afforded by their meetings for candid discussion among ourselves about ourselves, free from oratorical buncombe of glittering generalities. I have never yet learned to believe that all of virtue, honesty or patriotism abide exclusively with any one class, profession, calling or party, nor that all the demagogues and knaves are in some other. But I am persuaded of this—that the character of training, thought, association and daily employment of the individual exert a marked, peculiar and far reaching influence upon his capacity for service as a citizen, and that he in turn will impress that quality of influence upon the state and community in the exact proportion in which he mingles with its citizenry and takes part in its public life. This idea is what lends my subject its significance, since it is peculiarly a government of law under which we live—notwithstanding the fact that some of our distinguished citizens have recently expressed a fear that it is coming to be a government of "policies and bureaus,"—and it consequently follows that the administration of such a government must be very largely affected by those who make the study and practice of law their business.

It is a sort of axiom with the profession, that the law is a conservative science, but we do not always take the trouble to follow out the corollaries which may be drawn from that proposition. For the law likes neither the jungle nor the desert: it prefers not to stray too far from the tried and well-beaten paths. Here it will turn aside a step to avoid a stump or boulder, there for a rut or a bog, but it will not wholly abandon the way and seek entirely new paths. And so its disciples move along the lines of reason and logic, tempered as it were, by the demands and weaknesses of human nature, but with the moral conscience of the race looming steadily in the foreground. Yet it is

safe for the law and for lawyers to venture upon untrodden ways, to seek new remedies for new evils, and to apply novel restraints to unwonted manifestations of greed and oppression, as indeed we must—it is safe to do these things if in doing them we do not lose sight of the fundamental principles of justice and will allow ourselves to be guided by the experience of the past. We have not grown so great or wise that we can make human nature anew by a new code of laws, or reverse the hereditary habits of a people by one fell swoop of legislation or rid them of the desire for gain or pleasure through spasmodic raids by the police power of the state. Many people believe that such things can be done; lawyers as a class do not, and that is where their trained conservatism acts as a sort of fly-wheel to the erratic impulses of statesmen, who might perhaps have served their country better if their minds in youth had been imbued with some of the principles of Blackstone and Story and Cooley.

The community and state at large are ordinarily neither better nor worse than their public servants, and so it is that in the administration of the law, the lawyer, whether at the bar or on the bench, represents the practical working conscience of the people. Some have a finer and keener sense of the fitness of things and the high duties they owe their fellows; with others that sense is more rudimentary and the faculty of conscience less developed; but in our courts of justice there is maintained on the whole a happy medium, representing a stable equilibrium, neither too delicately poised for those less sensitive to the demands of an ideal justice, nor too crude on the other hand for those more advanced in the science of morals and good government. Theorists and sophists may preach diverse moral standards and consequent duties, but in the forum of justice as administered under our American jurisprudence, those duties and obligations find harmonious relations, and seek their own level through a practical application in the verdicts of juries and decrees of courts.

But the man or class that is truly conservative does not merely conserve, but constructs as well. You can't conserve anything by standing still and doing nothing. Stagnation means disintegration. It has always been the glory of the common law that it was not an inflexible, rigid growth, keeping pace with changed conditions and new requirements, yet leading us always into the new fields through the avenues of past experiences. The lawyer cannot discard at will the "traditions of the mighty past." To do so would be contrary to his whole training and habit of thought. He may not make as much noise in the world as the apostle of discord and unrest—the would-be reformer who proposes to upturn all we have without giving us anything in its stead,

but his accomplishments are written on the statute books, in court records and decisions and the legal history of his country. He recognizes the fact that acts of legislatures and judgments of courts cannot change the laws of nature nor the instincts of men, and he therefore proceeds to deal with these latter as he finds them, step by step, making a little progress here and a little there, but realizing always that successful efforts at reform proceed primarily from the vantage ground of past experiences. The man does not come from the ranks of the legal profession who, in his zeal to reform our whole system of laws and government or to attain certain desired ends, however laudable, tramples daily on the statutes and constitution in the endeavor to accomplish those ends.

From the very fact that the lawyer occupies this position of conservatism, from the fact that he will not break lightly with the past, but stands between the people on the one hand and the agitator and the radical reformer on the other, he is subjected to much ill-advised criticism. And not criticism alone, but denunciation and anathema. It comes now and then from all classes and shades of opinion—the demagogue, the doctrinaire, the anarchist, the ultra conservative. Since the lawyer is unavoidably prominent in the making and interpretation of laws, the dissatisfied and disappointed everywhere are prone to charge most of both their real and fancied grievances upon the head of our profession. Literary cranks and self-constituted teachers of the public in all kinds of so-called model living, break out periodically in storms of abuse, sarcasm and invective against both lawyers and courts. But you will find that these gentry are the very first to consult an attorney and invoke the protection of the courts when their own rights are in question. Now it is the jury system they charge is out-worn, again our criminal law is a mockery, and in season and out of season the imperfections of corporation law. They ignore the fact that all human institutions share the imperfections of our frail human nature, and that no branch of the law's administration can be any more nearly perfect than the average man and woman. But it is not an uncommon thing for people to discuss and even assume to instruct upon subjects about which they know nothing. I think perhaps Trumbull estimated all this class of critics fairly well when he assured us that

“No man e'er felt the halter draw,

With good opinion of the law.”

Unfortunately, however, there is a class of men in our profession, as among all professions, who tend to bring it into disrepute, and whose

practices supply only too much foundation for the prejudices of an ignorant and ill-natured criticism. As the noble profession of medicine has its quacks, as the pulpit has its imposters, so the profession of law has its shysters. To such no trick is too shady and no way too dark if it will only serve their purpose. The chief object of the lawyer of this class is to separate the client from his substance and appropriate the latter to his own use. These fellows are a reproach to their professional brethren, who must bear their sins by proxy, and are a menace to society because of their peculiar training and opportunities. They not only overreach the law and their clients, but too often lead others into crime and set in motion influences that are far-reaching and most pernicious. By just so much as the upright lawyer is a conservative, a builder up, a preserver, so is the trickster an anarchist, a disintegrator of society, because he contributes all that he can to make justice a mockery and law a sham. Lawyers and courts can render a great and valuable service to any community or state by weeding out such as these, by turning upon them the light of day, and if need be the sword of justice as well, thereby teaching both them and the lay members of society that those who would instruct others as to the law and their legal duties and would raise their voices as advocates in courts of justice, must themselves be men of honor and law-abiding citizens.

Then there are the newspaper and illustrated lawyers, more public in their practices and methods, and in a way more difficult and dangerous to deal with than those who quietly pursue the shady paths of trickery and dishonesty. They use their profession only for the purpose of appealing more effectively to popular prejudice and thereby gratifying their inordinate ambitions. These are the devil's greatest liars, and so prolific in the art that they lie about their own lies. They are always in the foreground in denunciation of anything or anybody that may be for the time unpopular with the masses. In most of the states habitual drunkenness is a ground for disbarment, and for the same reason I believe that in these days habitual lying should be a ground for disbarment. The kind of lawyer I refer to lies from choice and makes a business of it. You all know him. He is the father of discord and unrest among classes and the various conditions of life. He preaches one thing to the public and practices another himself. If corporations and political bosses are on the boards for public censure he is loudest in their denunciation, and at the same time is the first to do business with them. He lies for fun, he lies for pay, he lies for short-lived honors and ambitions' gratification—he lies for everything.

And so we find that our influence is not all conservative—not all in the direction of good, but after all it must be admitted that these who

properly enlist our disfavor and contempt are indeed but a small portion of our numbers. On the contrary it must be true that the individuals who as a class are constantly undergoing a thorough mental training and are daily familiarizing themselves with the legal relations which each man sustains to his calling and to society, ought to bear a bountiful harvest of beneficent influence. If bent on justice, the advancement of society and the furtherance of good government, they will necessarily render an incalculable service to the state. Mr. Justice McClain of the Iowa supreme court, a ripe scholar and able law writer, as well as jurist, in speaking of judges and lawyers developed under the common law, says: "The respect for and devotion to the law which they have exhibited and inculcated has done more to develop the self restraint which is essential to successful self-government than any other influence which has been brought to bear in the history of the world." If that statement can be borne out with reference to those who administer the common law generally—and it seems that it can—how much more may be safely said for those who constitute the bar and bench in the discharge of their respective functions under our American constitutions and statutes. They are almost uniformly believers in orderly conduct and government of law—they are rarely agitators or demagogues; they look with disfavor on violent and radical changes. To them constitutions and statutes are potent and commanding forces in the government of society. To them defects and miscarriages in the government of communities and states is due rather to human frailties than to either the law or government itself.

This typical American lawyer, if I may call him such, as a practical thinker lays a premises on which all men can agree, and from thence proceeds to reach conclusions by the course of logical reasoning. He calls to his assistance not only a thorough knowledge of the present and its conditions, as well as the characteristics of the human nature with which he has to deal, but he also avails himself of the experience of the past, and from his mastery of both the material and intellectual subjects with which he is dealing he reaches practical conclusions, upon which he invites the deliberate consideration of his fellows and those on whose judgment the ultimate result depends.

With the peculiar opportunities that come to the lawyer, there also devolves upon him a concurrent duty, one which he must discharge to his fellows and to society, and one on which he cannot look with indifference or avoid with impunity. By reason of the fact that he is a mental laborer, a thinker and a spokesman in his community, an instructor of a large number of his neighbors and acquaintances in their legal duties and obligations, both to the citizen and to the state, he

must naturally exert a powerful influence in moulding public sentiment for either good or ill. For, if he is not a legislator himself, he drafts the laws and advises the members from his district; if he is not the executive or ministerial officer, he is most assuredly his legal adviser, and the judge on the bench, sometimes himself a lawyer, is in a large measure aided in arriving at judicial conclusions through his arguments, reason and logic. If the constitution is invaded by either the legislative or executive branches of the government, he is the first to detect the danger and call the halt. In order to faithfully and properly discharge the duties he owes to clients and to society, he must be absolutely honest, deeply attached to his profession, and supremely interested in the work in hand. The profession of law requires and must utilize a variety and sweep of knowledge as comprehensive as the bounds of human employment and enterprise. Its follower should be a practical psychologist, learned in the vagaries of the human mind; he should have a working knowledge of the arts and sciences, else he will never be able to correctly determine the relations which each man's profession or employment sustains to every other, and his relative rights and duties thereunder. But whether he be equipped with the learning of the university and college of law or be merely a graduate of the common school and a student from a country law office, the law and immutable principles of justice must look the same to him whether he has to deal with the man whose intellect has scarcely opened to the light of reason and whose conscience has barely germinated, or with the individual whose towering intellect is the admiration of the multitude, but whose conscience has been so warped and mouldered by that intellect that it sees evil everywhere except within itself.

After all honesty of purpose and faithful service is the ultimate test in this as in every other profession or business. The lawyer is the truest conservator of the honor and traditions of his class who upholds them the most worthily. In some of our large cities municipal government and conditions have seemed almost hopeless; crime and corruption have appeared to be impregably entrenched behind wealth and the blandishment of "influence." Many good citizens have almost despaired, and it has fallen to the lot of lawyers to undertake the task for relief, and in doing so they have done far more toward maintaining the majesty of the law and renewing the faith of the doubting citizen in its impartial administration than all the theorists on legislation and law reform could accomplish if their theories were put into effect tomorrow. In so doing they prove to all men that there is but one rule of law and but one standard of justice for the wealthy and influential debaucher of municipal officers as well as for the poor or the so-

cial outcast. Thus our free institutions are conserved by demonstrating to the world that they are real and substantial rather than a delusion and that the great mass of our citizens are honest and sound to the core.

In passing, it is worthy of note that our cosmopolitan population, drawn from every quarter of the globe, naturally tends to varied and diverse notions of law and government and the duties of citizens thereunder. To teach the idea of liberty and free government has as many hued aspects as there were sundry rules and regulations in their fatherland. Some of our citizens have come from countries where class distinction was written everywhere, where one law governed the rich and educated, while another was applied to the poor and ignorant, where family and position were supreme; but from whatever quarter they may have come, none have ever before known a country so equally just to all, so democratic in laws, in customs and practices as is this country of ours. Large numbers land upon our shores annually who have an inborn hatred and dislike for anything that savors of law or orderly government. To them we owe a duty, but over and beyond all that we owe a much larger duty to ourselves and our country to teach them that this is a country and our laws are for their protection and betterment; that they have passed beyond the government and policies of men and the whims and caprices of hereditary officialdom into a government by the people through the due administration of the laws of the land. It has seldom failed, however, in all the history of this country that the man of foreign birth, matter not from whence he came nor what his antipathies have been to organized and regulated society, if he became a student of our laws and a practitioner in our courts, that he came to be zealously attached to our institutions, a useful and valued citizen, imbued with the supremacy and conservatism of our laws and the stability and equilibrium of our government.

The peculiar training and qualifications of the American lawyer have fitted him for mingling with all classes and conditions in life. His manners and customs have necessarily always been democratic. The nature of his calling and engagements is such as to insure him a respectful and considerate hearing on all subjects and at all times. In this country he has always had special opportunities for becoming a true leader of men. It was particularly so in our revolutionary period when the Adamses, the Otises, the Hamiltons, the Henrys, and the Jeffersons not only fired the popular heart with their fervid eloquence and nerved the popular intellect by their unanswerable logic, but maintained at the same time the cherished traditions of constitutional lib-

erty and respect for law, which they rightly deemed our most priceless heritage from the land whose sovereignty they felt compelled to renounce. And when it came to the framing of the constitution of the infant nation, again it was the lawyer of the best and most conservative type who controlled the form and directed the scope of that great instrument; not as a theorist, not as an experimenter in untrodden paths, but as a conserver of all that the past centuries of English liberty had proven best in the charter of Anglo-Saxon freedom. Yet even these men could not foresee the new conditions which would arise, the novel questions which would be brought to the touchstone of that instrument in the swift upbuilding of a mighty nation. After all and of necessity they drew the merest outline. It was left for another great constructive lawyer, the incomparable Marshall, to write the real and living constitution as we know it today, in judicial opinions covering a third of a century. It was he who breathed life into that sacred document. It was he who gave it a meaning, a purpose and a mission; it was he who started it to laying deep and broad the foundations of this peerless free government.

We build monuments to the leaders of our victorious armies, to our distinguished statesmen and scholars. We teach our boys and girls to revere their names as once active and potential forces in fashioning our destinies, in establishing a just and independent government and in giving us free and enlightened institutions. The tributes and honors we thus confer upon the names of those who are entitled to a large place in the public memory have been well deserved; but in so doing we have somewhat overlooked many of those who, pursuing the even tenor of their way, unheralded by martial music or popular acclaim, have by their arguments at the bar of justice and by their opinions from the bench, shaped the history of our country in its civil and economic life and development far more effectively than have our statesmen or warriors.

Humanity has not yet evolved a perfect conception of absolute justice. Until it does there must necessarily be a degree of imperfection and even injustice, both in our institutions and in many of the things we do, individually, collectively or officially. The greatest of earthly phenomena is the human mind, and its best fruits are great and good thoughts. Whatever degree of justice may be finally attained must be reached by way of our mental conceptions of right and wrong, and by our faculty for reaching correct mental conclusions. That must ever be the great object of our intellectual training as lawyers. As the conceptions and operations of our human and finite minds become

more perfect, the closer will become to the perfect exercise of that conservative and constructive influence of which I have attempted to speak—the nearer will we be able to approach the goal of absolute justice. So will we maintain with Tennyson that:

“Through the ages one increasing purpose runs,
And the thoughts of men are widened
With the process of the suns.”

Sanitary Laws

By DR. ELMER E. HEG.

Mr. President and Gentlemen—When the officers of your association requested me to present a paper of mutual interest to your profession and mine, I was greatly honored, for it is indeed a compliment to a physician to be asked to address the State Bar Association and while I doubt my ability to offer anything that will either interest or enlighten you I have ventured to comply with the request so kindly made of me.

The people look to the members of your profession, not only for advice as to what the laws may be, but also for the enforcement of those laws and for the enactment of such laws as may be needed, for the advancement of the welfare of the nation, state and municipality.

Sanitary laws, state medicine and preventive medicine are practically synonymous terms, the aim of all being the preservation of health and the prevention of the necessary consequences of diseases.

It is not too much to say that on sanitary laws (or preventive medicine) depends the happiness of our people and the success of our nation. The varied industries on which we depend for our comforts, the wealth which enables us to enjoy them, and the arts of civilization which adorn and diversify our lives are but fruitage of the tree whose root is health. That nation which is vigorous in its individual citizens will be strong as a whole. It was not so much the fire and sword of the Goth that devastated and made proud Rome a heap of ruins, as the physical degeneracy of a people enfeebled by luxury and the diseases which luxury entails, and ravaged by pestilences. It is health that nerves the arm that wields the hammer and sword, that gives keenness to the eye, that sights the gun, penetrates the mysteries of the microscope and that lends acuteness to the brain of the lawyer, the statesman, the inventor and the merchant. Without health the arm fails, the eye grows dim and the brain dull.

It is not enough that we should acquaint ourselves with the general principles of the great science of the health of the nation and state. We must become familiar with the minutest details of the methods by which those principles may be put into practical application. Just as it is not enough to possess an intimate knowledge of general laws, we must know how practically to apply these laws. And

we must possess sufficient self control, both individually and collectively, to be willing to submit to the enforcement of legal enactments designed for their application.

It is idle to prate of the enforcement of sanitary laws as an infringement of personal liberty. Submission to reasonable personal restrictions intended for the welfare of all is the very foundation of civilized liberty. The individual who insists on what he is pleased to call his own rights in defiance of law and to the detriment of the common weal is an undesirable citizen of the republic. If we aim to render growth more perfect, decay less rapid and life more vigorous, we must give up many primitive or individual liberties to insure advanced civilized liberties and to permit a free social and commercial intercourse.

It is a frequent remark that in a representative government health laws cannot go in advance of the intelligence of the people, all of whom, illiterate as well as educated, foolish as well as wise, have the right of suffrage.

And, unfortunately, pseudo-scientists and acute persons, who are ready, for a consideration, to undertake to prove the worse the better cause on any scientific or other subject, no matter how profound, swarm the lobby of every legislature. For such pernicious intermeddlers the proverb of old Romans, "*Ne sutor ultra crepidam*," (Let the cobbler stick to his last), would be an effective argument if any argument could avail against such effrontery. Modesty as a point of attack being barred, is not the suggestion worth consideration that scientific men, who in one way or another occupy official positions in connection with the state government, should regularly and as a matter of course be called on for advice in the decision of all question involving scientific knowledge and training?

Let us give our legislators credit for honestly striving to arrive at just conclusions on such questions, but how are they to distinguish with certainty between the honorable men of science whose only object is the truth and who seek to promote the public welfare, and the selfish pretender whose end and aim is to fill his pockets from the public purse, or the wild visionary, who deluded by his own imagination, seeks to delude others? How, unless the government formally calls on the scientific, thoroughly educated medical and scientific experts connected with her various departments to consider questions of this kind coming before the legislators and to advise as to their solution in the interest of the nation's or state's welfare, giving the reason for their advice? If such a provision was satisfactorily established in connection with the national legislature the states would soon follow the ex-

ample thus set. The fact that medicine has become a great science, and preventive medicine one of its most important branches, imposes on both the national and state governments the solemn duty of exercising a wise paternal care for the health of the people so far as the majority will allow.

While education of the people and the legislators is essential to the development of the highest type of sanitation, it should be understood at the outset, however, that, no matter how great efforts we may make to produce such education, unless we have the *lex scripta* to fall back on, state medicine, while it may be a beautiful science, can never be a practical art. Under the stress of agonizing illness or in the presence of a great epidemic people will be impressed for the moment with the necessity for sanitary restrictions and submit to them in fairly good grace, but the moment the pressure of fear is lifted, self-love will resume its supreme and unrestricted sway.

We must fairly and squarely recognize the fact that during ordinary good public health, the great majority of the people are neither wise enough to voluntarily submit themselves to the requirements of sanitary laws for the sake of preserving their own health and that of their loved ones nor righteous enough to exercise self-denial and repress the cravings of avarice to save others from sickness, suffering and death.

Laws we must have. These laws must reach into all relations of life. As their basis they must start with the prompt and accurate registration of births and deaths, and of the presence of communicable diseases and they must embrace the control of epidemics by domiciliary quarantine and otherwise as the employment of prophylactics and disinfectants; the supervision of the transportation of the living and the dead and the burial of the dead; the construction, heating and ventilation of homes and public buildings; the protection of water supplies and the resortation to purity of polluted streams; the protection of food stuffs including milk, and other beverages and the barring of our doors against the introduction of communicable diseases and pestilences from foreign countries.

To accomplish these diversified ends certain of the subjects, such as the prevention of the introduction of disease from foreign countries, the prevention of pollution of interstate streams, and the sanitation of public conveyances on interstate lines of travel by land and water must be controlled by federal law and to a certain extent some of them are. Other subjects, such as the protection of state waters and the sanitation of school and public buildings and the disposal of sewage must be regulated by state law, and still others, as the sanitation of streets and

disposal of garbage, by municipal ordinance.

These are part of what we need for the full and proper development of the health and strength of the nation and state. What have we? Practically nothing in the federal laws and very little more in our state laws, though some states have advanced to a relatively high point in their individual protection. The nation has a Public Health and Marine Hospital Service which was originally established to furnish medical attendance to the sailors of the merchant marine, and is a bureau of the treasury department. This by slow degrees has been developed into a semblance of a public health service, so much so, in fact, that about five or six years ago the words "Public Health and" were added to its original title of "Marine Hospital Service." Its duties, however, had earlier developed so that it included the inspection of ships from foreign ports and the reporting of health conditions in foreign countries. It therefore, to a large extent does afford protection from the introduction of diseases from foreign countries. It also, under certain conditions, will assist state authorities in the control of local epidemics and will even undertake the task of suppressing such epidemics when requested. That, however, is about the limit of its authority and in no respect does it protect our state against the invasion of an epidemic from another state by means of interstate communication or by the pollution of interstate streams. It is an exceedingly efficient service so far as it goes and its work and scientific investigations are a credit to the nation, but it is hampered by lack of authority.

As a state what have we? A little more relatively than the nation, but not much. In 1891 the legislature established a State Board of Health and Bureau of Vital Statistics. The authority conferred upon this body as a board of health was so indefinite and visionary that it practically was none at all, and the system of vital statistics was one which, if it had been the deliberate design of the framers to have provided for incomplete and inaccurate statistics, it could not have been well improved. This system has been in force from 1891 to July 1st of this year, though repeatedly attention was called to its deficiencies and the only possible benefit has been to provide places for political workers in the county auditors' offices. Thus from 1891 to 1899 we had provided for us a State Board of Health whose only duties were to meet twice a year and collect inaccurate and incomplete vital statistics. In the latter year an act amendatory of the first was passed conferring upon the board considerable authority in the control of communicable diseases, but mainly of an advisory character and largely without power to enforce its advice and where such power did exist it was to a

great extent nullified by the lack of a system of local control and we had the anomalous condition of being able to enforce certain sanitary regulations such as domiciliary quarantine within the limits of incorporated cities with the inability to do so outside such limits so that any person infected with a contagious or communicable disease could go where he pleased, so long as he remained without the limits of a city, provided his physical condition permitted. Under such conditions the control of communicable diseases was well-nigh impossible.

In 1903 a fairly good system of local control of sanitary conditions affecting contagious diseases was established by the legislature and therein the authority of the State Board of Health was considerably augmented, and these were both improved by an amendatory act passed by the last legislature. This same legislature also passed an act providing for the prompt and accurate registration and collection of vital statistics in accordance with a system which elsewhere has been proven to be productive of reasonably complete and accurate reports; one which, in fact, represents the latest and best methods that have been developed by experience. This is all we have and we need very, very much more if we are to reach the high state of development that we are entitled to and which we all hope for. We need to provide for sanitary homes and schools and other public institutions and buildings; for the systematic inspection of school children, especially as to their eyes, throat and ear; for pure water and sewage disposal so that one city cannot empty its sewage into the drinking water of another as is now being done at several places in this state, and so that our oysters, clams and shell fish may not become infected by polluted sewage and carry disease to our families.

We need all of these and many more; other states have taken such precautions and found the benefits conferred were many fold greater than those anticipated. Some states have learned their lessons through sad experiences and the development has been slow and exceedingly expensive; others have profited by the experience of older states and have early in their career provided measures for the future protection of their people, and thus been saved, not only the sad experiences but the expensive cost of the eradication of errors.

Massachusetts has probably reached the highest state of sanitary development of any state, but it has been by the slow process of development, though she began many years ago and has progressed steadily. Pennsylvania has within the past two years provided probably the most elaborate system for sanitary protection of any state, but she had always heretofore been negligent and careless and as a consequence the unsanitary condition had, like weeds in an untended garden, grown

with great profusion. The results of this elaborate system now being seen are many fold greater than the most optimistic had dared predict. Montana, no older than Washington, having, by a decree of her supreme court, been deprived of the semblance of a sanitary system that she had, has during the past year reorganized her public health administration and incorporated into her laws some that are designed to give practical application to the most recent advances of sanitary science.

Legislation concerning sanitary subjects has been quite active during the past two years, throughout the nation, more so than for many years past, showing that the people are beginning to realize that health is their greatest asset and that it can be more perfectly preserved than restored. Laws completely reorganizing or inaugurating state systems of sanitation have, since 1905, been passed in California, Idaho, Montana, South Dakota, Utah, Wisconsin, and Nebraska, while in Connecticut, Indiana, Michigan, Minnesota, Nevada, New Jersey and Oregon, amendatory acts giving to the state authorities increased facilities for controlling sanitary conditions have been passed.

Allusion has been made to the recent legislation in Pennsylvania which has opened the way for unusual advances in sanitary administration. It cannot be inappropriate to refer to some features of this legislation as they are certainly worthy of adoption. The first is, the substitution in place of a State Board of Health of a Department of Health with a single official at its head, under the title of Commissioner, such official being in reality a member of the Governor's cabinet, if the Governor can be said to have one. The increase in effectiveness due to concentration of authority, coupled with absolute power of initiative, can be readily understood. In only two other states has this form been adopted previously, namely, New York and Texas, and with very satisfactory results. The commissioner appoints all assistants and employes, assigning their powers and duties; he may issue subpoenas to secure the attendance of witnesses and compel them to testify. He may issue warrants to any sheriff, constable or policeman to apprehend and arrest such persons as disobey the quarantine orders or regulations of the department.

Secondly, in addition to a complete and comprehensive method for the collection of mortality and morbidity reports, an ideal system of sanitary administration is provided consisting of county inspectors who are in reality consultants and deputies of the commissioner, whose authority covers the county; and city and rural local health officers who are in effect agents for the departments for the smaller cities and for a limited subdivision of the county. The local health officer reports

to and works under the immediate direction of the county inspectors and generally enforces the department's regulations locally, and having his authority from the state, it carries far greater weight than if from a local source.

Thirdly, all inland waters that may be used for domestic purposes are directly and specifically placed under the charge of the commissioner and on him is laid the duty of preserving their purity or reclaiming them from pollution. No new water system or addition to an old one and no new sewage system or addition to an existing one can be built without permission of the commissioner, which can only be granted after an extensive and careful investigation demonstrates there is no danger therein to the public health.

There are many other commendable features in these laws, but these are sufficient to show that thus there is created a state system of sanitary administration complete and symmetrical, its head as the seat of power in the state, reaching down through the counties and their subdivisions to the people. If it fails to accomplish great things for the health and happiness of the people it is the fault, not of the system, but of incompetence at the head.

It seems to me that it is the province of the medical profession to study the problems of sanitation and to advise what is needed to properly and practically meet these problems and that it is the province of the legal profession to carefully consider such advice and see that it is enacted in efficient comprehensive laws, if, as we all desire, we are to reach the highest state of civilized development.

Such legislation is bound, sooner or later, to come here as it has in Pennsylvania, and it will be either through lessons learned from experience and thus slowly and expensively, for experience must be paid for, or through observation and profiting by the experience of others.

Which will it be? That, gentlemen, is a question for you to answer, for with you more than with any other profession or class of citizens rests the power of deciding.

Banquet

[Secretary—The Seattle Bar furnished royal entertainment for the State Bar Association. The committees in charge of the local entertainment showed ability and earnestness that stops only at success. Richard Saxe Jones was at the head of the committees. He is the standing chairman of all such committees. All the rest were selected by good judgment or, by good fortune, or by both.

While it is against the Constitution of the Association to permit the record of a vote of thanks or of praise, I know that those who were in attendance at this annual meeting will justify me in quoting from Mr. Jones' letter to his own committee, which letter is in part as follows:

Seattle, Wash., July 15th, 1907.

To the Executive Committee of the Local Bar:

Gentlemen:—Our entertainment of the State Bar Association having ended, I think it only right that this committee should place upon record its commendation of the services rendered by two of our members, Mr. D. B. Trefethen and Mr. D. C. Conover.

While others have worked hard and faithfully, there can be no question in the minds of any of us that these two members of the bar have given practically all of their time, during the past week, and very efficient service.

In fact, as chairman of the committee, I feel that the success of this Bar Association meeting and the entertainment afforded, is largely due to the two members of our committee above named.

Thanking you one and all for the generous assistance received in carrying out your instructions, I remain,

Yours respectfully,

R. S. JONES, Chairman.

Below are given the committees in charge of the entertainment, with the program following:

EXECUTIVE COMMITTEE—Richard Saxe Jones, *Chairman*; E. C. Hughes, *President, ex-Officio*; D. C. Conover, John Arthur, D. B. Trefethen, John F. Miller.

RECEPTION COMMITTEE—E. C. Hughes, *President, ex-Officio Chairman*, Judge C. H. Hanford, Judge Orange Jacobs, W. A. Peters, Sam'l H. Piles, Harold Preston, James H. Kane, James A. Kerr, James B. Howe, John C. Higgins, W. B. Stratton, Carroll B. Graves, Will H. Thompson, Charles P. Spooner, J. T. Ronald.

ENTERTAINMENT COMMITTEE—D. B. Trefethen, *Chairman*;

L. B. Stedman, A. J. Tennant, H. S. Frye, Geo. H. Walker.

FINANCE COMMITTEE—D. C. Conover, *Chairman*; Maurice McMicken, Harold Preston, Walter McClure.

COMMITTEE ON BADGES, ETC.—John F. Miller, *Chairman*; Wilmon Tucker, Alfred Battle.

PROGRAM COMMITTEE—Richard Saxe Jones, *Chairman*; Frank P. Lewis, James A. Kerr.

Friday, July 12th, 7:30 P. M.

EXCURSION ON PUGET SOUND ENTERTAINMENT AT LUNA PARK

WEST SEATTLE

Saturday, July 13th, 8:30 P. M.

SHAKESPEAREAN BANQUET

STANDER HOTEL

"I'll watch him
"Till he be dieted to my request
And then I'll set upon him."

MENU

"As You Like It"

DRY MARTINI

Toke Points on Shell

Clear Green Turtle

Salted Almonds

Queen Olives

Radishes

CHATEAU YQUEM Broiled Salmon Trout, Lemon Butter

Sliced Cucumbers

Potatoes Gastronomique

"There's nothing to be got now-a-days
Unless thou canst fish for it."

PONTET CANET Tomato en Surprise, with Cold Meats

"Anger's my meat;
I sup upon myself;
And so shall starve with feeding."

EGYPTIAN DEITIES

Llalla Rookh

"Dainty bits make rich the ribs."

POMMERY AND GRENO Roast Spring Chicken, Stuffed, Giblet
Sauce

Garden Peas

New Potatoes

"The cock, that is the trumpet of the morn,
Doth Awake the God of Day."

"Much Ado About Nothing."

Waldorf Salad

"Shall I not take mine ease in mine Inn"

"Winter's Tale"

Neapolitan Ice Cream Cake

"All's well that ends well"

PRINCIPE DE GALES

Camembert

Toasted Bents

Demi-Tasse

"When we have stuff'd
These pipes and these conveyances of our blood,
With wine and feeding,
We'll have suppler souls."

TOASTS

"A Feast of Reason and Flow of Soul"

HON. THOMAS BURKE, *Presiding*

Welcome and Introduction

HON. E. C. HUGHES, *President State Bar Association*

"Welcome—A curse begin at the very root of his heart that is not glad to see thee."

Response

HON. THOMAS BURKE, *Toastmaster*

"My father's wit and my mother's tongue assist me!"

"The Law, the Land and the Home"

HON. RICHARD A. BALLINGER, *Commissioner of the General Land Office*

"He hath much land, fertile;
. . . As I say, spacious in the possession of dirt."

"The Bar of Our State"

HON. ALBERT E. MEAD, *Governor of Washington*

"Do as adversaries in law, strive mightily;
But eat and drink as friends."

"Our Country—Its Lawmakers"

HON. CHARLES. W. FAIRBANKS, *Vice-President of the United States*

"The laws, that thieves do pass on thieves."

"Our Country—Some More Lawmakers—Its Judiciary"

HON. JAMES F. AILSHIE, *Chief Justice of the Supreme Court of Idaho*

"You dismiss the controversy bleeding
The more entangled by your hearing."

"Our Country—The Law Sustainers—The Ladies"

HON. WILL E. HUMPHREY, *Member of Congress*

"When they weep and kneel
All their petitions are as freely theirs
As they themselves would have them."

[Note—The banquet was held in the commodious dining room of the Hotel Stander. More than four hundred lawyers sat at the tables and partook of the feast amid the strains of one of Seattle's best orchestras. It was the intention to publish a list of the names of those attending the banquet, especially those lawyers residing outside of Seattle, but lack of space and slowness in the printing of the proceedings have changed the plan.]

Several press representatives attended the banquet and this office takes this occasion to thank the press generally for the space given to the Association, but I desire especially to thank the Post-Intelligencer for the attention it has given, not only at the last meeting but for the last several years.—Secretary.]

PRESIDENT HUGHES—After a week of earnest and successful work we have this hour of play. I have thought many times in the course of this week, when we were working earnestly and seriously, and since I have stood here, that it is remarkable among the lawyers of this state, so many are of more than local fame, learned, successful, and that you are all undoubtedly living well, and that I join with you in rejoicing in it and the hope that you may continue in it and be happy, and I know that our honored Vice President is with me in sentiment. (Applause.) But I have thought many times during this week, and tonight more than ever, that if my career at the bar were to end with the achievement and results of this week's work I should be contented.

We have had the rare good fortune by the efforts of the members of our executive committee, and the Secretary of our association, to secure the attendance with us and the participation in our deliberations of that splendid and profound judge of the United States court for the second district of Alaska. Not only this, but we have listened with pleasure and with profit to the chief justice of the supreme court of our neighboring state of Idaho. (Cheers.) We have had with us the chief justice of our own state, who has addressed us, and two of his associates, who have had the temerity to meet with us and participate in our deliberations. We have had with us, and actively taking part in our work the judge of the United States district court for the eastern district of Washington, whom the members of the bar, not only of the ninth circuit but of the entire country have learned to honor and respect. (Cheers.) We have had with us, participating in our exercises, the secretary of the interior of the United States. (Cheers.) We have had with us the vice president of the United States. (Prolonged cheers.) Now, gentlemen, I am going to ask you for one moment to stop and seriously consider what all of this means? Who are all of these men I see before me, gathered here from every state almost of our common nation. They represent, I believe, the best in education; the best in ambition; the best in aspiration; the best in the practice of our profession in all of the states of this Union. Coached by the spirit of the Pathfinder and the ambition of the Empire Builder, you have started in the right way, and I trust that the future meetings of this association, the future of this association, the future work of this association may be

all that this occasion and the work of this week promises (Prolonged applause.)

You have been the guests of the lawyers of the city of Seattle. You have been their welcome guests—very welcome. You are their guests tonight, and we are proud to welcome you as the guests of our city. (Prolonged cheers.)

There will preside as toastmaster over the further exercises of this evening, a citizen, a lawyer, an ex-justice of our supreme court, whom not only the lawyers of the city, but all the citizens, delight to honor. I introduce to you as our toastmaster, the Honorable Thomas Burke. (Prolonged cheers.)

JUDGE BURKE—In the eloquence of his welcome, delivered by the retiring president of the State Bar Association, he said that, after the exercises of this week, so gratifying to the lawyers of Seattle, and we trust as agreeable to you, that he would be contented to die—

PRESIDENT HUGHES—I said in a professional career.

JUDGE BURKE—I misunderstood him because my ambition is not so elevated as that. I am not prepared to stop right now.

By the terms of this program, I was expected, I don't know upon what theory, to respond to a toast dropped by one of my fellow members, and, I think, on behalf of the guests, but at the end of this week and here tonight there exists a feeling that cannot be expressed in words, and if our conduct and our actions toward you and toward those of the city are not an assurance of our appreciation it would be in vain to express it in words.

Gentlemen, by long custom, and in my case also only an approach to the end, the toastmaster is supposed to be privileged and to be given authority and commission to do as he likes, and one that all may play upon who please. And I think it is much more gracious, on behalf of the guests tonight, that others should have the center of the stage I will endeavor to give it to them. (Cries of go ahead; cheers.)

The first toast on the program is "The Law, the Land, and the Home." It was to have been responded to by our respected citizen, Judge Ballinger (cheers), Commissioner of the General Land Office. But he has been called to our neighboring city, and in his place a distinguished citizen of the state of Washington, and more recently appointed judge in Alaska, will respond to the toast. It was assigned to Judge Ballinger and the present speaker has agreed to take the assignment, with this difference, that he is to have a minister's privilege of referring to the text or not as he pleases. Allow me to introduce Judge Wickersham.

JUDGE WICKERSHAM—Mr. Toastmaster and Members of the State Bar Association of Washington: I regret very much that Judge Bal-

linger is not present tonight. First, because I like to listen to his eloquence, and second, I would escape when I am not prepared to do the subject justice. But as the toastmaster has said, I have the minister's privilege, and I am not going to talk upon the subject which was given Judge Ballinger, but upon one which is near and dear to my heart, and that is the territory of Alaska. (Cheers.)

I believe every member of the Bar of the State of Washington can do Alaska a great good, and perhaps if you will give me a few minutes of your valuable time, I can tell you how you may do that.

We are engaged now in the territory of Alaska, in laying the foundation broad and deep for the upbuilding of the new empire. We want the help of the lawyers of the state of Washington. Will you help us? (Cries, we are with you; of course we will. Cheers.)

We have now a system of government in the territory of Alaska which is unsufficient and unsatisfactory to the people of that territory. It is too bad, because it is a government by the court. It is a bad government, I know. I have been the government in one part of Alaska myself, and I know it is a bad government. It is not the government for American citizens. I know all about it, for I have been there, and the people of Alaska know it. What we want is to reach the members of the senate and the members of congress in the state of Washington. Will you help us to reach them? (Cries, we will.)

Will you help us to get a government for Alaska "Of the people, by the people and for the people?" (Cries of "sure!" cheers.)

When I went to Alaska seven years ago to take charge of that great district over which I have had the honor to preside, the court was the only form of organized government. There was not a public building of any kind. The only thing in all that great area of territory extending from the southern border around to Japan, which looked like the beginning of the civil government, was the commission which I held, signed by William McKinley. (Cheers.) I began the work with nothing but the assurances of the government at Washington that it would support every good thing that I did in the name of law and order. The great preponderance of the interior was uninhabited. Two years later, when some of them made cleanings and the prospectors were coming in to that great territory which they opened up and called "Fairbanks," after Senator Fairbanks from Indiana (cheers) and the result has been that the Fairbanks camp, like Fairbanks of Indiana, is a pure gold camp.

The governor of Alaska has no executive power. He is a mere figurehead. He has power to appoint his secretary. He has power to appoint notaries. He has power to prepare a report for the President of the United States, and there his power ends. He is required by law

under which he is appointed, to see that the laws are faithfully enforced, with the result that if there are any violations he has no power to act. He may report to Washington and there his power ends. On the other hand, the judge of the district court in Alaska has all power. He has the duty imposed upon him of performing not only the judicial functions in the territory, but the executive and administrative functions of every kind. He grants liquor licenses to the saloons. He goes into the character of the men who require licenses. He appoints all of the officers. He lays out all of the commissioner districts. He appoints all probate judges, all justices of the peace, all officers who administer the government for the entire country. It is a wrong system of government and it ought never to be allowed. It is the desire on the part of the people of that country to have a better government. They are American citizens and they want a local self government. A change should be made in this respect and I desire to have it made for them, and I want the members of the bar of the state of Washington to assist the people of the territory of Alaska in that respect. Now some of you are inclined to treat this matter lightly, but I want to say to you that the people of the state of Washington do not realize, in my judgment, what they owe to Alaska, and especially is that true here in Seattle. The best customer of your business man here in Seattle is Alaska. You talk about your foreign trade—you people here in Seattle; you do not begin to sell to your foreign trade what you sell to Alaska. It is your best customer. Alaska bought \$20,000,000 more than you took out of Alaskan mines last year. And you got all the money. That is why we want a better government. And from the people of Eastern Washington we buy wheat; it is your flour that we put in our storehouses. It is your granaries that support Alaska. And we are digging the gold that pays you for it. And we have other minerals, too. We have more coal in Alaska than Pennsylvania has. We have more tin than Wales. We have more copper than Montana. We have more gold even than California. We have more fish than all the rest of the world put together, and all tributary to Seattle and the state of Washington. Every one of your men are interested in this matter and we want your support. We want the support of your senators and of the members of congress from this state to help us get a better form of government. As a judge in that country I want to be rid of the duties of government. I want to go back to my work in the judiciary. I want the judicial authority divorced from politics. (Applause.) I like to talk on these matters to the people in Seattle and the West Coast because they are in a position to understand and should understand the conditions in Alaska, and these conditions should be un-

derstood by every one in the United States. We are looking forward to the time when we will have a better form of government and we want the help of the senators and members of congress to help us get. (Applause.) Will you help us? I know you will and I thank you. (Applause.)

JUDGE BURKE—Gentlemen, our time is rapidly passing and I will have to hurry through our program. The next speaker on this stage is one of the members of the bar of our state whom we honor, and who has been called to the chief office in the state, and when his abilities were recognized by being made governor, distinction was added to the bar of this state. I know that you will listen with interest, respect and attention. And I take pleasure in introducing to you Governor Mead of Washington.

GOVERNOR—Mr. Toastmaster and Gentlemen: I have followed the remarks made by Judge Wickersham with a great deal of interest. I believe I am safe in asserting that the people of this state appreciate his efforts and are with him along the lines of the reformatory measures he advocates. I can understand the arduous duties he has to perform in representing not only the judicial but to some extent the executive department of that far away territory. The Judge states that he desires to be rid of the duties of a governor. In regard to this suggestion, I am constrained to disagree with him, as I am very glad to perform the duties of a governor.

The Bar of this territory and state during the history of territory and state governments has performed its part ably and well. The names of our pioneer lawyers appear on the rolls of the legislative and executive departments as well as of the judiciary. Truly the members of the first Bar of the territory of Washington rendered great service in laying broad and deep the foundation of the political structure which we delight to call our State of Washington. The present generation enjoys the results of the wisdom and patriotism of the pioneer lawyers. I have endeavored during my term of office to show a lively appreciation of the lawyers of this state. I think I have granted every application presented to me by those desiring appointment as notaries public (laughter), when it was accompanied by the required fee of ten dollars, and I can assure this Association that I shall continue to follow that custom. (Laughter and cheers.)

This state owes much to the Bar in its great development. In the brief time I shall address you, I might mention one example of a lawyer who was willing to sacrifice the time necessary to serve the state in a very important litigation. The firm of which our honored President is a member, in the early history of this administration was called

upon by the Executive for aid in the most important case ever submitted to the courts, involving the investment of the permanent funds belonging to the common schools of this commonwealth. Mr. Hughes courteously came to the state's aid at a critical time in the history of this litigation, believing that, as a member of the Bar and a good citizen, it was his duty to respond to the call for assistance. He rendered able service without recompense other than that derived from complying with that impulse that is in the heart of every loyal citizen to render to his country or his state his services when public necessity requires them.

I have had the honor and privilege of calling twelve gentlemen from your ranks to serve upon the bench of the supreme and of the superior courts of this state. I thought I knew fairly well the ability of these gentlemen before they were given commissions, but I am happy to say they are more than fulfilling my expectations. It is a pleasure also to recall that the gubernatorial appointments of these gentlemen were confirmed by the people at the recent election.

Gentlemen, I am glad you have been so generously entertained by the lawyers of King county. I have had many opportunities to know something of the good fellowship among the members of the King county bar and to know something of the cordial hospitality of this great commercial city.

In the formative period of this part of the northwest, Mr. Vice-President, the founders of this county saw fit to honor one of your distinguished predecessors when they designated this portion of the territory as King county. The founders of the sister county upon the south showed their appreciation of Mr. King's distinguished chief and designated that portion of the territory, Pierce county. We are glad, Mr. Vice-President, to pay our tribute, not only to you personally, but to the exalted office which you occupy. We are indeed honored to have you visit us. We have welcomed you most cordially to this northwestern commonwealth on other occasions, and are cognizant of the great interest you have always taken in this portion of our common country. I had the pleasure of meeting you at the Irrigation Congress last fall in Boise, in our sister state, and had occasion to observe that you had been giving attention to matters of vital importance to the Northwest and that you were familiar with many of the actual conditions that exist here.

Gentlemen of the Bar of the State of Washington, I believe that this meeting and others like it, will not only bring us into close fellowship and extend our acquaintance with each other, not only be of great benefit to you as citizens, but I feel that I can testify to the great

benefit resulting to the people of this commonwealth in the improvement of its laws and the advancement of its interests by your meeting annually in different portions of the state for the purposes for which your Association was organized.

I thank you cordially for this generous reception and wish you all a safe return to your respective homes. (Applause.)

JUDGE BURKE—We have with us tonight, as our distinguished guest, a man who is both a lawyer and a statesman, and who has toiled up the pathway until he has already reached the second post of distinction in this great republic in achieving his career, and which bids fair to be continued until the highest post has been attained. I know that we will all listen to him with pleasure and with profit, for there is no man in the entire country better qualified to speak upon the topic, "Our Country—Its Lawmakers," than Charles W. Fairbanks, the vice-president of the United States. (Cheers.) Vice-President Fairbanks.

VICE-PRESIDENT FAIRBANKS—Judge Burke, and Members of the Bar of Washington: I have got to respond to a toast which has been assigned to me, with no words except those which shall be born of the moment. The theme is one of surpassing interest. No greater theme upon this earth than "Our Country." We seem to have a proprietary interest in it and in truth we have, for we inherited our country through the sacrifices and valor of our forefathers upon many fields. Our country is but young when compared with the older countries of the East, some of which have forty centuries past to look down upon the triumphs and achievements, even before our country was discovered. For more than thirty centuries cities dotted the banks of the Tigris and Euphrates before this country was discovered. Look at the achievements in the years since our fathers first set foot upon the Atlantic seaboard. Look at the tremendous contrast. No people in the history of all the world ever made such tremendous advances as we have made. Yet, great as it all has been, we stand but at the beginning of our career. The masters to which Judge Burke referred have always been with us. They are with us now. I believe they are contained in the great majority of the American people. I believe more firmly than ever tonight in the underlying solidity and the overmastering virtue of our institutions and our country. Our country's flag never stood for so much as it does today. It is a power in two hemispheres. It is a power for justice at home and abroad, and for righteousness within the jurisdiction of our country. Our boys have raised the flag higher than any other flag upon the earth, and tonight her stars mingle with the stars of the milky way. (Applause.)

Our country—would that we had the power to prophesy and foretell

her people. We can see but a little way beyond the present. Finite vision can see not into the morrow. But in faith we believe that the tremendous past and the mighty present are but a prophecy of the still mightier future. Some think, as the good Judge said—and I am gratified to be presented to your kindly favor by one of the greatest lawyers at the bar of Washington, yes at the bar of America. (Applause.) I am glad to see that you know to whom I have referred (more applause)—the opportunity of the future never was more brilliant with promise than it is tonight, refuting the ideas of those people who believe that the powers that be, by some subtle, malign influence have been closed against the coming generation. We are beginning to see that it is to the magnificent Pacific slope we must look for the brightest promises of the future. (Applause.) I have been so gratified and overwhelmed by the hospitality of the citizens of Washington that it is difficult to even attempt to express it. I think I had better stop. (Voices—go ahead.) I do not want to turn my address into a sermon. (Voice—Oh! never mind the Christian Endeavor.)

I do not see many members of the Christian Endeavor society in this company. (Laughter and applause.) I see a Providence running through this world, and I know of nothing, Mr. Toastmaster, more propitious than the concurrence of the meetings of the Christian Endeavor societies of the world and the State Bar Association of the state of Washington. (Applause and laughter.) That great association has struggled in the sands of antiquity, in the great Chinese empire, in Japan, in all of the illiterate nations beyond the sea. It has made great conquests that taxed its capacity to the utmost. It is valiant and brave and patient, and I have yet hope that it will not fall helpless by the wayside in its efforts among the members of the bar of the State of Washington. (Applause and laughter.)

But I am wandering from my subject, Our Country—Its Lawmakers. One of the splendid things about our country is its lawmakers. Our fathers when they framed the Constitution of the United States wisely provided that the lawmaking body should be composed of the chosen representatives of our people, and that is also found in the state constitutions of our states, and I do not think we fully appreciate the work of those mighty men of genius who in the dawn of our history, framed and mapped out that great constitution upon which our nation rests. (Applause.)

I know something about our country's lawmakers. I was once enrolled among the number, and I may say to you in confidence that the lot of the lawmaker is not always a happy one. There are many grave questions which tax his powers to the utmost. He is pulled this way

and that and the road is not always clear. We have so many new conditions to meet in this country—in this great expanding country. We are confronted continually by new problems and it is not always easy for the lawmaker to know the true and correct course. He is liable to disappoint and to satisfy at the same time. No matter what he does, no matter by what light he may be guided, sooner or later he will encounter the critical and ungenerous judgment of some of his constituents. He cannot satisfy all. It is not, I think, within the power of man to satisfy all of his fellow men. Even the Presiding Architect of the universe cannot satisfy all. He must be sure of satisfying one out of the 85,000,000 of American people—that is himself. (Laughter and applause.) If he will follow the dictates of an upright purpose and an unswerving conscience, he will doubtless satisfy himself and, I have found in my brief experience, that a man who does this ultimately will satisfy the greater part of his constituents. I have seen men, who were lawmakers, trying to satisfy everybody, but not successfully. I have called to mind a few lines which may properly describe his condition:

You can and you can't,
You shall and you sha'n't,
You will and you won't—
You'll be damned if you do
You'll be damned if you don't.

(Laughter and applause.)

I am gratified to say that the writers of our constitution and the writers of our laws are largely those who have adopted the profession of law as their profession. We Americans ought to be proud of the excellencies and wisdom and splendor of our constitution and laws. We ought to be proud of the genius and wisdom and patriotism of the bar of America. (Applause.)

Our lawmakers should always be selected with care. Men only should be chosen to write the laws who understand the genius and spirit of our institutions and who have the capacity to incorporate into a law the will of the people. That lawmaker who understands and interprets the composite judgment of the people, is the man who can write laws which will stand the critical judgment of time.

Pardon me, Mr. Toastmaster; my time is up. (Cries of go on, go on.)

VICE-PRESIDENT FAIRBANKS—My friends, you have been very kind, but there are other speakers—

A VOICE—We can hear them any day, go on.

VICE-PRESIDENT FAIRBANKS—I congratulate you upon the great privilege you enjoy. (Applause.)

We have written many laws in the past—our lawmakers have been writing laws relating to new subject matter; they have been obliged

to deal with problems growing out of our tremendous industrial activities and our commercial developments. We have been obliged to deal with problems which did not tempt our ancestors. We have written those laws in an open and generous spirit, and with no purpose except to advance and accelerate the growth of healthy commerce. We have written them in the spirit of the institutions of the Republic—and that is fair play and building up a legitimate trade and commerce. We put no embargo nor hindrance upon legitimate genius or generous enterprises. But it is against the wrongful systems that have gotten a foothold which the government does not countenance. Our lawmakers have never fallen short of the demands of the people at any time since our government was started upon its illustrious career. And I have faith to believe that the lawmakers of the future will be as wise and courageous as the lawmakers of the past or the lawmakers of today.

Fellow citizens, we have a country which will be as good as we make it. Our country is what we, in the exercise of our unerring and patriotic judgment determine that it should be. Our lawmakers are, as a rule, no better and no worse than the great body of our countrymen. Sometimes the people are ambitious for them, if any of them don't go fast enough, or perchance, if they go too swiftly. There should be both a generous and a fair judgment. My association with the lawmakers of the nation, as representing the people, and that is that when he accepts a commission from the great American people to go to the national capitol and there to deliberate and enact the laws for this great and progressive people, all of the men are animated by one purpose and one alone, and that is to advance the honor and welfare and glory of our common country. And I want to say that Washington, young state that she is—magnificent in her young stamina; wonderful in her present and potent in her future possibilities—has sent to the national congress to pass the laws, some men as able, as upright, as courageous, as aggressive as the representatives of any other states between the two mighty seas. (Applause.)

Now, my friends, I think I can see for you a large part in the future welfare of our country. We owe an allegiance to our different states. We love them. We wish to serve and advance their welfare. But we, in a larger sense, are citizens of but one state, and that, the highest among the states of the world since the stars first sang together—the republic of the United States. (Applause.) Her future will depend much upon the virtue and intelligence of her lawmakers, and I ask that you all leave this splendid presence tonight, with a new resolve: that we will consecrate ourselves to uphold the hand of those who make our laws; that we consecrate ourselves to the advancement of

civic righteousness in all of the people over our entire country. I thank you. (Prolonged applause.)

JUDGE BURKE—I have heard, and probably you have, people who have spoken slightly of the West as regards to their disposition to maintain law and order. And occasionally I have heard a remark that in our western states we have not shown respect for property rights, a respect for human life, and a regard for orderly procedure for law that we should have done, but I believe the criticism is only superficially correct. Within the last few weeks the western states have been giving us a more striking example of the capacity of the plain, common people of the West to maintain law and order and to enforce the law. In our neighboring state of Idaho, there has been enacted—there is being enacted now a scene of more than passing interest. It is a scene surpassing any other in the march of centuries—it surpasses any other in our generation in its forcefulness. It is more impressive in the enforcement of law and order, it is a more impressive scene as exemplifying the fact of our capacity for self government than you will find in the commerce legislation or any other legislation. It is more impressive than any other scene in civilized life that I know of today that demonstrates that these United States are the best and safest place to live—I mean the scene that is being enacted in the little courthouse in the city of Boise in the state of Idaho. There the law is being enforced, not by asking the central government to do something, but it is being enforced by the plain, common people of that extreme western mining state. They have organized their court and proceeded in a properly and orderly manner to bring men accused of a grave crime before the bar. They are giving an exhibition of the power and majesty of the law that must be a lesson to all, and that shows the capacity of the western man to handle every department of his government. I believe that Idaho will be in time building a monument to the governor who was cruelly murdered because he was a true and faithful American. I do not know under what sign he was born. I do not know under what flag he first saw the light, but I do know that he was as pure an American as ever breathed a breath of life, and I know he was sacrificed because he was faithful to his trust and upheld the courts of law and order and regulated liberty against those who sought to overthrow it. But the greatest of all monuments that the state of Idaho can raise is the one they are building to him in the orderly procedure in the court room at Boise by which they are trying the accused without passion, without any improper demonstration, calmly and from a standpoint of justice. We have with us tonight a man who is honored by the state of Idaho and who in return has cast his lot with them and

is now an honored member of their judiciary, and the chief justice of her supreme court. He will now respond to a toast, "Our Country—Some More Lawmakers—Its Judiciary." It seems most fitting that he should speak to us on this topic at this time.

Allow me to introduce to you Chief Justice Ailshie.

CHIEF JUSTICE AILSHIE—Mr. Toastmaster and Gentlemen of the Washington Bar: I would be recreant to my sense of duty if I failed to catch the deep sense and the gratitude that I feel I owe to your Toastmaster for the high compliment he has paid my state and the good people I have the honor to serve. When the chairman of your committee was considerate enough to my state, and the people I am trying to serve, to invite me to respond here to a toast this evening, my first impulse was to decline, and if you should have occasion to regret that I did not act on that impulse, I trust you will charge it to your committee-men rather than to my indiscretion. And, gentlemen, I am persuaded he is the gentleman who had the wording of my subject. Who else would have been so astute or would have had so humorous a sense of the fitness of things. He says, "Some more of Our Lawmakers—Its Judiciary." (Laughter.) Now, that gentleman understands that legislators have a very poor way of expressing their intentions. Indeed, he may easily believe, as possibly some of us have, that very often they have no real intentions at all. So I am to consider the judiciary.

Well, the judiciary is composed of the only body of men in this country who never make mistakes. (Laughter.) You know they are always right. You appreciate that when you get decisions handed down. When you once translate one of them and know how that faithful tribunal, which we call the "court," and see how suddenly his notions change at times; when you know how we work all night reading briefs and decisions and passages in the evidence in cases, and then the next day how the court will snooze while you are piling upon him the most flowery and weighty argument, or importunings from a tender pleading heart that has been fired by the magic touch of a lucrative fee, you will realize more fully the work of the court, and you realize the arduous undertaking he has in the assignment turned over to him. And if, as a balm to your wounded and lacerated sense of justice he listens for hours to your argument, it is simply another mark of his magnanimity. He closes his eyes and your opposing counsel commences his argument, which is no argument at all in your way of thinking, and when he finally finishes you believe you have won the case, and the court goes strictly and decides against you. With tears in your eyes and pebbles in your voice you can appeal to the conscience and sym-

pathy of the court, only to find that that conscience has been stigmatized and seared by the argument of the other fellow. After the shocking news of an adverse decision, and you have exercised what is every man's constitutional right—every counsel's constitutional right of going around to the corner grocery or the club room as the case may be, and figuratively kicking the court, you file a petition for rehearing in language perhaps more forcible than respectful. And afterward, upon its being overruled without argument, you feel very much like a story I heard of a fellow that was knocked down by an automobile and as he was getting up and feeling to see how many bones were broken, the driver, who had stopped in the meanwhile, and was coming back to see how badly the fellow was hurt. Upon seeing him, the other fellow says: "My God, fellow, you don't want to do it again, do you?"

Now to be serious a moment, I have no objection against what has been frequently termed judicial legislation—where courts have under the name of construction, produced what has been facetiously termed judicial legislation. Indeed, I am not so sure but we would be better if we had a little more judicial legislation. I am sure of this one thing, that many of the acts of our legislatures would be meaningless or would fail to serve the purpose for which they were perhaps enacted if there was not considerable freedom of action at times in what is termed the judicial legislature. The framers of the constitution, as it was with our national constitution, set forth in eloquent terms, a definition of the various powers, but in cases where it becomes necessary for the proper carrying on and interpretation of the acts of the legislature we have to read into the real constitution the judicial constitution which enables the court to act in a way to make the laws passed by the legislature effective. I have just one criticism to make of our judiciary and then I shall have finished, and that is, the inclination ours courts apparently have of appealing too much to case law and precedent. (Applause.) I would infer from the way you take that the court here regard this about the way we do. My experience as a practitioner, both at the bar as well as on the bench, is that no two cases are exactly alike in their facts, and for that reason we can render more effective justice with a little independent thought and investigation than we can by the support of cases, or by hunting for a precedent. I do not mean to say that we cannot get more law from cases, but I do mean to say that there is too much, in my humble estimation, too much case law and too much precedent, and too little reliance on the facts of the specific case.

Now, gentlemen, and Mr. Toastmaster, before I take my seat I want to express to you my deep sense of appreciation of the many and uniform courtesies I have received from you and your association since I came to this city. It has been a great pleasure to me and I take your many courtesies as a renewed mark of your kindly feeling toward the state I have the honor to be a citizen of, and in a small way to serve. And I thank you sincerely. (Applause.)

JUDGE BURKE—I know that we have all listened to the chief justice with pleasure and we are proud to have been able to entertain him. The next toast, and the last, is entitled, "Our Country—The Law Sustainers—The Ladies." I am told that the only way to know that the ladies are the law sustainers is to make a trip to the custom house. (Laughter.)

In designating a gentleman to respond to this toast I do not know how it is among the members of the bar outside of Seattle, but here it is perfectly well known who the person should be. He must be a lion among the ladies, with those attractive looks and winning ways which gain favor always, and in picking out a man with these qualities from amongst the Seattle members it is only proper Mr. Humphrey should respond to this toast.

W. E. HUMPHREY—Mr. Toastmaster and Members of the Bar of the State of Washington: As I am called upon to respond to this toast, the last, the best, the sweetest and most important of all subjects, I am reminded that we have reached the hour of one; but no time and no place is too sacred to consider this question. In responding to this toast, I find that I am in a very embarrassing position. I hardly think it is necessary, however, to make that statement to this audience, because if there is any man that has reached the bald-headed stage, who has not been in an embarrassing position in regard to this subject I would like to have his photograph.

Now, in responding to this toast I wish to refer just briefly to the fact of what a cold and melancholy world this is and would be without woman. You can give a man all things else in life but he cannot live without the woman who has been with him all his lifetime and whom he can remember as she looked when a girl. (Applause.) She is usually, almost always, his guardian angel, she is at his side doing everything she can to make him happy and to make his life full of the sunshine and glory that would otherwise be absent. She is always his assistant and playing an important part in his affairs. She works along patiently, silently; if it were not for her man would be a dissatisfied, pessimistic, churlish individual, and would become unbearable.

In the garden of Eden man was created and placed by the Divine

Builder. Other things were made for his happiness, the sunshine, the firmament, the rivers, the flowers, the beasts, but still he was not happy. Then the Creator in His infinite wisdom and pity, sent him the entertainer, the woman, and finally he overcome his lonesomeness and for 5,000 years since that time it has never been recorded that a man was lonesome when a woman was within speaking distance of him. Even God when He created woman had to have more or less experience. He created the universe and all that was in it, but He wouldn't undertake to create woman until He had had some previous experience. We all believe that He created all things else and then, understanding the job, he made man and then rested and then created woman. The Divine record is silent on the question as to whether He has ever rested since, and we give our ladies the benefit of the doubt.

We hear some people preaching for woman's rights. It seems to me that woman ought to be satisfied. She has our protection, our love, our heart, our reputation and our pocketbooks and most of our religion. (Applause and laughter.)

Did you ever stop to think what this world would be without woman? There would be no love, no home, no poetry, no sentiment, no milliner's bills, no beautiful dresses, no grass-widows, no old maids, and few children, no mothers-in-law. As I have studied this subject and as I have listened to the president's remarks upon this question, you would think from the way he persistently and strenuously kept at it that he had almost come to the conclusion that he knew something about the woman question also.

But turning from jest. If you would ask me tonight to picture you an ideal woman I would not go to the idle rich, to the would be aristocrat, that has become imbued with the old world idea that it is disgraceful to be useful. I would not go to the woman who has abandoned the home for country clubs, or societies, or to preside in some grand ballroom. But tonight in a little home upon the farm, in a modest home in the country—the average humble home where the true and honest little mother is living and looking forward to the future with one foot on the cradle, that mother that is tonight singing the lullaby to him who in the future will dictate the policies of the nation and direct the Union aright. I would tonight pay my tribute to that woman. The ideal American woman. That woman who lives and loves in her own home rocking the cradle of her child. Applause.) She has the secret of our country's greatness. All great mothers do not have great sons, but all great sons have great mothers. In all ages woman has ever been the defense and the inspiration of the poet. The most beautiful pieces of sculpture, the most perfect painters, the most famed orators are the re-

sult of a woman's love, and generally her influence stands out above all things else in the attainment of his success. Her courage and her love is in his very heart and brain of every worker in the world, she is the inspiration of us all. And now tonight as we are reaching the close of this banquet I propose this sentiment:

SENATOR PILES (Responding to numerous calls.)—I asked the committee not to put me on the program because, I desired to hear the gentlemen from other parts of the state who were the guests of the city of Seattle, and it would have given me much more pleasure to have listened to some one else than to have stood here before you tonight. But after having practiced law for twenty-five years in the territory and state of Washington, it is one of the greatest pleasures of my life to meet here in Seattle with so many distinguished members of the bar from all over the entire state of Washington. And since I have had the honor to serve in part this great state in the greatest legislative body in the world, I have taken pains to measure the great lawyers of the United States in comparison with those in the State of Washington, and with whom I have had to battle in many fierce contests at the bar. I have stepped, upon occasion after occasion, into the supreme court of the United States and there listened to the eminent Secretary of State for the United States in some of the most important litigations that have ever been pending in the supreme court of the United States. Or I have stepped into other courts and listened to other great lawyers with great reputations, in the large cities of this country, and then coming back to you as I did after having listened to the great men, to the great lawyers of this country, I am proud and I am happy to tell you that among those whom I have known in a practice of something like twenty-five years, we have at this bar lawyers who stand among the greatest lawyers of the United States. (Applause.) And when I see the bar of the supreme court of the United States, I know that you, my friends, are as capable of presenting any case to that high and august tribunal as the majority of the lawyers in the United States. In other words we will find—we can find here in the state of Washington, just as good lawyers as you can find in any other section of the United States, and we should feel as we do, an absolute pride when we think of the ability contained within our own bar. Now I don't mean to throw any great bouquets at the bar of this state, but I mean to state just as I have observed, after I heard great arguments by some of the most eminent lawyers.

Now, my friends, it is not my place to undertake to make a speech here tonight. But I want to say this to you, that the lawyers of the United States have taken a great part in the making of this country of

ours. The majority of the senators are lawyers and I have found them to be men, coming as they do from every section of our common country, who are imbued with the idea that their duty is to make such alliances as would be of material benefit to the people of their section of this country. We heard it said that the president of the United States wields a great stick over the senate, the body over which our distinguished vice-president presides with great dignity and great learning. But did you ever stop to think that the president of the United States does not wield a big stick over the senate or house of representatives? But it is true that the president wields a great power, and should justly rule a great power in the law making of our country, as he is the only one competent to judge the situation and to recommend a course along certain measures and to deal with certain questions. If, for instance, the president should recommend to that body that certain state laws should take precedence in matters that heretofore have belonged to the people of the entire country, do you for a moment think that his great stick could hold power enough to compel that body to act? He is a Christian in belief and in his conviction; he is a man of integrity and ability. The American people want an American course pursued and they are behind him. They are behind him because he has advanced such measures before congress, and has recommended to congress the enactment of such laws as he thought the needs and necessities of all the American people require (applause). If it were not so, if he had not recommended the proper course to congress, shown them that his position was correct, do you suppose for a moment that all the power of that great stick that the newspapers speak of, would be sufficient to force the congress to have enacted into law the measures which were enacted for the benefit of the country.

I may say in passing, that I want to congratulate the bar and the people of this state upon the fact that the vice-president of the United States is here with us tonight. And I may say to the bar of this state, and through them to the people of this state, that no man has presided over that great body with greater dignity and with greater impartiality than the distinguished vice-president of the United States, who is our guest here tonight. (Applause. I simply want to say that in all the measures that have been passed by congress since I have had the honor to be a member of that body, which has been of material benefit to the people of this country, have had the support and active support of the vice-president as well as the president of the United States. (Cheers.)

And acting in harmony as a great body, the executive and the senate and the house of representatives, has given the people of

this country a series of laws within the last few years of which the American bar should feel proud and of which the American people should feel grateful to the great legislative and executive department of this country.

And in conclusion, my friends, I thank you and I am glad that I came here tonight, but I regret that I have been called upon to speak, instead of some of the other gentlemen from other sections of the State of Washington. I am glad the people of Seattle, and the Seattle bar, have had the honor of entertaining this Bar Association, and I hope that you will leave here with as pleasant recollections of the meeting of the Association and your work here as the members of the King county bar feel in having had you here, and of having the pleasure of entertaining and visiting with you, and with the impressions of your meeting left upon this community, and its happy and helpful memory upon the bar of King county. I thank you. (Applause.)

JUDGE BURKE—There are others to hear from but the hour is so late we will conclude our exercises. Goodnight.

OBITUARIES

JUDGE HARRIS

(Extracts from address by HON. EMMETT N. PARKER.)

I have been asked to say some few words in memory of our departed friend and brother, Judge Harris, late of Tacoma. I have but very brief remarks to make and they are purely extemporaneous.

Judge Harris was one of our brethren who started in the legal profession, or rather in real estate and legal work together, under the disadvantages of not being very well prepared as to the ordinary and conventional educational requirements, but like every man who has attained eminence in the profession, he had more than ordinary ability on that line. It cannot be said that he became eminent as a lawyer amongst us, but he was one who, as a citizen, as a lawyer, participated in the local affairs of his city almost as much, I believe, as any other man in Tacoma, although as a citizen of the state he was not so widely known.

Judge Harris, I think, came to Tacoma some thirty years ago. He was married there not long afterward. He studied law some before he arrived there, I think. He was elected a justice of the peace at an early day and that is where he got his title of "judge." He was a man of remarkable force of character. He was a man of high mind, of remarkably good legal mind, and had he possessed the advantages—the early advantages and after training of many of his colleagues—he would have been a man of more than ordinary legal attainments.

He was member of the city government of Tacoma for a good many years, and for a larger portion of that time he was president of its council.

He was a man of remarkably strong and deep conviction and there was no occasion when he feared to express those convictions. He acted as much from a deep sense of right as any man I ever knew. He has now passed to the Great Beyond.

His death was rather untimely; it was sudden and it left but a few hours for preparation before he was taken off. Immediately prior

to that time, he was in the vigor of health. He was a man of middle age, probably 50 years old, I cannot be exact.

But, take it all in all, we who knew his peculiarities, his good qualities, his great force of character and his devotion to right as a duty, most regret his taking off, and recognize that in him was a man of great worth to the city of Tacoma, to the State of Washington, to the country as a whole. We are better for his having been amongst us.

Judge Harris was a man also of deep religious conviction. In this regard, I think, he possessed a stronger faith in the Christian religion and in those things which have to do with the Great Hereafter than most of us possess. While he made no great outward show of his profession in this regard, he was a consistent member of one of the Christian churches of Tacoma. His views in those matters were perhaps not what might be called orthodox, but rather liberal. But, knowing his life work as a lawyer and as a man, what he has done, what he thought, and how he acted, I believe it is well with him now. I am glad to have been one who knew him well in his life time.

HON. THAD HUSTON

Extracts from remarks by Hon. THEO. L. STILES.

If it were not customary with us to make mention of our dead associates, I think it would be eminently fitting that in the case of Judge Thad Huston an exception should be made.

Aside from his judicial and professional duties, he was a favorite in many places, wherever he appeared in fact as a speaker. Being of an original and exceedingly forceful mind, he was always ready to address an audience and there was always a deep interest in what he had to say.

Thad Huston was born in Washington county, Indiana, in 1846. His father was in the war and died a soldier. Thad Huston, himself, went south to take care of his father's remains and went into the service and remained a soldier until the close of the war. Being of the temperament that he was, he was always interested in public affairs. I presume there was no man in the state who was more conversant with the history of the country than he. He was always a student, but his

education aside from his business, was obtained through his own energy and will power. Books were always at his hand, and, while he enjoyed the lighter subjects, the more weighty were his principal delights.

He came to Washington in 1887 and began to practice law in Tacoma. In 1900, he was elected one of the judges of our superior court, and was re-elected in 1904, and died during his term on the 24th day of June, 1907.

(Judge Stiles sobs, and is unable to proceed.)

Remarks by Mr. T. O. ABBOTT.

Judge Stiles has requested me to say a few words about Judge Thad Huston, as he was not able to finish his remarks on that subject. As a former member of the bar of Pierce county, I at one time had the pleasure and the privilege of knowing Judge Huston well, and I am very glad indeed to say a word or two in regard to his life.

A few days before the judge finally passed over, it was my privilege to call upon him at his bedside. I can well understand Judge Stiles' fullness on this occasion. Judge Huston, as you who knew him will remember, was a large man, weighing probably 250 or 275 pounds, and of very strong physique. As I saw him lying on his death bed, he was nothing but a skeleton. Yet his eyes were bright, his mind was clear, and I don't know of any time when his intellect seemed keener and at the time, we had conversation about matters of mutual interest and about his coming departure from this life, and he was perfectly willing to discuss the subject, rationally and clearly. His was a beautiful home life and yet he did not regret his departure. It is the universal opinion of every member of the bar who practiced before him that he was the best judge who ever sat on the bench in that county.

Another thing which will show the affection of the members of the bar of Pierce county toward Judge Huston is this: He was not a rich man and there was a mortgage on his house, his home. While he was lying sick on his back, the lawyers of the city took up a collection, paid off the mortgage and sent it to him. He remarked at the time I saw him, "I don't even know who my friends are. They have never told me." He was so full he could not talk and tears came to his eyes. After a bit he said that he couldn't understand what he had done to bring to him so much kindness and affection of other men that didn't seem to belong to him.

BENJAMIN FRANKLIN HEUSTON

Extracts from address by MR. MARSHALL K. SNELL.

No member of this Association was acquainted longer with Benjamin Franklin Heuston or knew him better than myself. The first childhood acquaintance made was Frank Heuston, a lad of about my own age. His parents, who had resided in Wisconsin for years, were Quakers, conscientious, studious people. His father formerly lived at Galesville, the county seat, and had been probate judge.

Frank and I attended for a time the same village school, were in the same class, but usually separated as far as it was possible to be—Frank at the head of the class and I generally at the foot.

Both having an ambition for the law we met again in the office of the Honorable Alfred A. Newman at Trempealeau, who afterward became Frank Heuston's father-in-law. I was accommodated with law books from this office, and Frank and others were also at the time students with Judge Newman, who was one of the most able judges of the supreme bench in Wisconsin, and who died while holding that office.

We next met in the law school of the Wisconsin state university at Madison, in the class of '80. Frank did not stay to graduate, but took a position with the well-known law firm of Wilson & Gale, Winona, Minnesota, where he remained until he came west. I preceded him west in 1888, and soon after received a letter from him of inquiry. I replied, asking him to come, and in a few days he walked into my office, and he remained with me about six months before making a location of his own. This was over eighteen years ago, and from that time on to his untimely death, he was identified with Tacoma.

He was known throughout the state as an able lawyer, a conscientious adviser, as a student, and a man capable of deep and careful reasoning. It is no mere platitude to say that he was a man of high character, that his home life and private character were ideal. Of my own knowledge, I can say that the widow that is now left to mourn him was his one boyhood sweetheart, and his only love, their life-long courtship commencing when Frank was barely sixteen.

Dying at an age which should mark the beginning of a lawyer's achievement, Benjamin Franklin Heuston had already by the force of his mind and character forged to the front ranks of able lawyers in this state. His death is a loss to the bar of the state. A man who has led the life of this of our departed brother need have no fear for the future, whether the destiny of man be real or ideal, it will be well with him.

HON. GEORGE C. HATCH

(Extracts from address by HON. GEO. E. MORRIS.)

I have had neither time nor opportunity since the invitation was extended to me to gather together that personal data of the man so necessary and so important in an address of this character. I have, from the newspaper accounts of his death, procured a few items as to his life history—other than that I can only speak in a desultory and informal way, of the man and the judge as I knew him.

He was, at the time of his death, that occurred on the first day of last January, about 50 years of age. He was born in the state of Iowa. He attended the schools of that state, and I believe he was a graduate of Oberlin college. After his graduation from college he studied law, being admitted into the courts of that state. He practiced law in the state of Ohio for eight or ten or twelve years. He came to Washington in 1890, locating at Port Angeles, where he continued his residence until death. At the time of his death his immediately family consisted of his wife and two little girls, about 10 and 12 years of age.

Judge Hatch received more than the usual honors that come to men of our profession. Almost his entire life in Washington was in an official capacity. Shortly after he came to this state, he was appointed prosecuting attorney of his county, and after he had completed his term in that capacity, he was elected for two terms, I think, as city attorney of Port Angeles. Then he again became prosecuting attorney in Clallam county for two years more, and at the time of his death was serving his second term on the superior court bench.

His death was the result of accident. He was leading his horses from the barn to the pasture and while they were passing through the pasture gate the horses jumped suddenly and in some inexplicable and unfortunate manner his ankles or feet entangled in the halter rope and he was thrown violently to the ground on his head, concussion of the brain following, from which he died in about forty-eight hours.

He was a simple and unostentatious man and he lived an unostentatious life. He loved best to be in the company of his wife and his little girls. He loved the beauties of nature and he loved to take his team and his family and drive out and enjoy the beauties of the natural scenery of that section of the country, which is so abundant and prolific in natural beauty.

It may be that there have been greater men upon the bench of Washington than George C. Hatch. It may be that men have filled that

position who possessed more legal ability, more legal acumen, were nicer in their discriminations, and the interpretation and declaration of the law, but however that may be, there never was a man sat upon the bench of this or any other state who discharged his duties more fearlessly, more faithfully, more honestly, more conscientiously than did George C. Hatch. And when he laid down his judicial ermine, it fell from his shoulders as unsullied, as unspotted and as pure as it first fell upon him.

He was not a religious man, that is, not a member of any church, nor a subscriber to any doctrinal creed. And yet, if Christianity consists in absolute purity of life in a man doing the very best he can in every position in which life finds him, in doing all and everything that he can for the uplifting and advancement of his fellow men, then George C. Hatch was a Christian of the highest type. He was at least a subscriber to the creed of the Ancient Mariner:

He liveth best who loveth best
All things both great and small,
For the dear God who loveth us—
He made and loveth all. •

Perhaps, Mr. President and gentlemen, a few general observations may not be amiss upon an occasion like this, after we have listened to the remarks upon the memory of our deceased brother. Death is not an uncommon thing among us. It is a matter of almost hourly occurrence. Yet few of us can tell what it is. Few of us can interpret. Philosophers in all ages of the past have sought to fathom it. Possibly, sometimes, we have thought the mystery solved; sometimes men have grown eloquent in the interpretation of it—yet we do not know what it is. We do not know, except that it is the transition from life to eternity—the crossing of the Great Divide, beyond which we may not look. Mythology represents it as a silent flowing river, yet we know not where its banks may be, nor can we see even for a little way across its waters. They may be lapping the shore at our very feet, and yet we cannot hear them; they may be ready to bear us away upon their bosom, and yet we cannot see them. Is there any lesson, my brethren for you and me in the lives of these earnest and faithful men, and in this uncertainty of life and certainty of death? I maintain that there is a lesson and one that we cannot afford to forget, and that is to be ever ready for the boatman's call; to have our lamps trimmed and burning to go with him whether he comes as a thief in the silent watches of the night, or as a foeman bold, in the light of the day. He should always find us ready. If I leave with this Association a single thought that I should want them to bear with them on going home,

if they were to forget every other remark that has been made, it would be this—that every member of this Association, every lawyer of this state should so live his life in all its environments and in all its ramifications so that when the time shall come for him to lay down his armor, it shall not be in the blackness of despair, not in darkness, but in the coming glory of triumph. May we say with St. Paul, "I have fought the good fight. I have kept the faith. I have finished the course. Oh, Death! Where is thy sting; Oh, Grave! Where is thy victory?"

PAPERS READ

Year.	Writer.	Subject.
1894...	John Arthur.....	President's Address—"Lawyers in Their Relations With the State."
"	...R. A. Ballinger.....	"Our Community Property Laws."
"	...Frank H. Graves.....	"Non-Partisan Selection of the Judiciary."
"	...Thomas Carroll.....	"Policy of Redemption Laws."
"	...John W. Pratt.....	"Government of Cities."
"	...Charles S. Fogg.....	"Evils of the Promiscuous Appointment of Receivers."
"	...James B. Reavis.....	"Our Exemption Laws."
"	...Frank T. Post.....	"The Material Man's Lien."
"	...Orange Jacobs.....	"Reminiscences of the Bench and Bar of Washington."
1895...	George M. Forster....	President's Address.
"	...George Turner.....	"Practice and Procedure in the State of Washington."
"	...Charles O. Bates.....	"Juries and Jury Trials."
"	...David E. Bally.....	"Stare Decisis."
"	...C. H. Hanford.....	"Jurisdiction of American Courts, State and Federal."
"	...John J. McGilvra....	"The Pioneer Judges and Lawyers of Washington."
1896...	Charles S. Fogg.....	President's Address—"The Law and Lawyer in History."
"	...T. N. Allen.....	"Judicial Legislation."
"	...N. T. Caton.....	"Pioneer Judges and Lawyers."
"	...Emmett N. Parker...	"Probate Law and Practice in Washington."
"	...George Doworth.....	"Corporations."
"	...R. S. Holt.....	"Contributory Negligence."
"	...James Z. Moore.....	"Landlord and Tenant."
"	...Alfred Battle.....	"Record Notice and Curative Acts."
"	...W. T. Dovell.....	"Bench and Bar."

Year.	Writer.	Subject.
1897...	Harold Preston.....	President's Address.
"	...E. B. Leaming.....	"Philosophy of the Law."
"	...W. H. Pritchard.....	The Policy and Practical Effect of Usury Laws."
"	...Ben Sheeks.....	Some Judicial Opinions—A Study."
"	...Austin Mires.....	Irrigation and Water Rights in the State of Washington."
"	...John P. Hoyt.....	Reminiscences of the Bench and Bar of Washington."
1898...	George Turner.....	President's Address.
"	...W. C. Sharpstein.....	"Annexation of Foreign Territory; Its Constitutionality and Expediency."
"	...F. H. Brownell.....	Mining Laws in Washington."
"	...James Wickersham...	The Constitution of China—A Study in Primitive Law."
"	...Henry M. Hoyt.....	The Legal Effects of Mortgages and Pledges of Rents and Profits of Real Estate."
"	...Frederick Bausman...	"Public Policy as an Element of Judicial Construction."
1899...	Theodore L. Stiles...	President's Address — "Legislative Encroachments Upon Private Right."
"	...James G. McClinton...	"Reform in Criminal Procedure."
"	...Byron Millett.....	"Fourteenth Amendment to the United States Constitution."
"	...George H. Walker....	What Shall Be Done About the Trusts?"
"	...E. F. Blaine.....	Decennial of our State Constitution."
"	...Samuel R. Stern.....	The Law and the Laborer."
1900...	George Donworth.....	President's Address—"The Passing of Precedent."
"	...Will H. Thompson...	The Status of Our Newly-Acquired Territory."
"	...Herbert S. Griggs....	Admiralty Practice."
"	...Charles E. Shepard...	Limitations on Municipal Indebtedness."
"	...C. W. Hodgdon.....	Government Ownership of Railroads."
"	...J. B. Davidson.....	Needed Reforms in the Laws of Marriage and Divorce."
"	...Thomas B. Hardin...	How Should United States Senators Be Elected."

Year.	Writer.	Subject.
1901...	Samuel R Stern.....	President's Address.
"	...A G Kellam.....	"The Trust Fund Theory of Corporation Assets."
"	...T O Abbott.....	"Advantages of the Torrens System of Conveyancing."
"	...E G. Kreider.....	"Law Reporting."
"	...Joseph Shippen.....	"The Insular Questions, and Their Solution by the Supreme Court of the United States."
1902...	Austin Mires.....	President's Address.
"	...Edward Whitson.....	"The Course of Legislation in Washington."
"	...Will G. Graves.....	"Stability of Legal Principles—A Thing of the Past."
"	...Arthur Remington....	"Railway and Transportation Commissions."
"	...C. H. Hanford.....	"Conflicting Decisions of Federal and State Courts."
"	...Orange Jacobs.....	"Reminiscences of Bench and Bar."
"	...Edward Pruyn.....	Poem—"A Day in Court."
1903...	R. G. Hudson.....	President's Address—"Trusts."
"	...F. D. Nash.....	"Street Assessments."
"	...N. T. Caton.....	"Some Pioneer Judges and Lawyers I Have Known."
"	...L. Frank Brown.....	"The Uses and Abuses of the Labor Union."
"	...Thomas Burke.....	"The Life and Character of John B. Allen."
"	...John T. Condon.....	"A Theory of Legal Obligation."
"	...James B. Reavis.....	"Taxation of Franchises."
1904...	W. G. Peters.....	President's Address.
"	...Carrol B. Graves.....	"The Desirability of Harmonizing State and Federal Statutes on Irrigation."
"	...E. C. Macdonald.....	"Relief of Our State and Federal Courts."
"	...Alfred Battle.....	For Affirmative of: "Should the State Permit Corporations to Own and Vote Stock in Other Corporations."
"	Theo. L. Stiles.....	For Negative: "Should the State Permit Corporations to Own and Vote Stock in Other Corporations."

Year.	Writer.	Subject.
1905...	Edward Whitson.....	President's Address.
"	...S. M. Bruce.....	"The Jury System."
"	...Harvey L. Johnson...	"The Development of the Law of Labor and Labor Organizations."
"	...Geo. Ladd Munn.....	"The Community Property Law and Non-Residents."
"	...C. C. Gose.....	"Is the Provision of Our State Constitution Relative to Private Ways of Necessity in Conflict With the Fourteenth Amendment."
1906...	Francis H. Brownell..	President's Address.
"	...Frank H. Rudkin....	"The Court's Work."
"	...Geo. E. Wright.....	"Some Questions of Real Estate Law."
"	...Harry McLean.....	"The Evolution of State Legislative Methods."
"	...James M. Ashton....	"Maritime Law."
"	...J. B. Bridges.....	"Log Booms on Navigable Rivers."
1907...	E. C. Hughes.....	President's Address.
"	...James R. Garfield....	"The Commerce Clause of the Constitution. (Sec. of Interior.)"
"	...H. E. Hadley.....	"The Lawyer Under Fire."
"	...F. T. Post.....	"Our Community Property Law."
"	...W. H. Abel.....	"Navigable Waters."
"	...H. G. Rowland.....	"Tide Lands."
"	...James F. Allshie....	"The Lawyer as a Conservative." (Chief Justice of Idaho.)
"	...Dr. Elmer E. Heg....	"Our Sanitary Laws."
"	...Chas. W. Fairbanks...	"The Lawyer." (Vice-Pres. U. S.)

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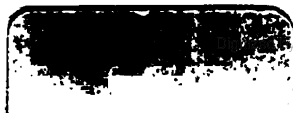
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